LAW WATCH ANALYSES | A CLOSER LOOK AT THE APPLICATION OF THE LAWS

THE JUDGMENTS OUGHT TO BE IMPLEMENTED

Analysis of implementation of European Court of Human Rights' judgments in the Republic of Macedonia

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FOUNDATION OPEN SOCIETY MACEDONIA
ФОНДАЦИЈА ОТВОРЕНО ОПШТЕСТВО МАКЕДОНИЈА

Series: A Closer Look at the Application of Laws

THE JUDGMENTS OUGHT TO BE IMPLEMENTED
Analysis of implementation of European Court of Human Rights' judgments in the Republic of Macedonia

Publisher:
Foundation Open Society – Macedonia

For the publisher:
Vladimir Milcin, Executive Director

Developed by:
Foundation Open Society – Macedonia

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Design and layout:
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Print:
Propoint

Circulation:
600

Free/non-commercial circulation

Skopje, february 2013

CIP - Каталогизација во публикација
Национална и универзитетска библиотека “Св. Климент Охридски”, Скопје

341.985(4-672ЕУ:497.7)(047.31)

ПРЕСУДИТЕ (треба да) се имплементираат : анализа на имплементацијата на пресудите на Европскиот суд за човекови права на Република Македонија. - Скопје : Фондација отворено општество - Македонија, 2013. - 124, 120 стр. : табели ; 24 см

Насл. стр. на припечатениот текст: The judgments oughr to be implemented : analysis of implementation of European Court of Human Rights' judgments in the Republic of Macedonia. - Обата текста меѓусебно печатени во спротивни насоки. - Текст на мак. и англ. јазик. - Фусноти кон текстот. - Содржи и: Анекс 1-6

ISBN 978-608-218-178-3

а) Европски суд за човекови права (Стразбур) - Пресуди - Имплементација - Македонија - Истражувања
COBISS.MK-ID 94444042

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FOREWORD

In the course of monitoring the implementation of legislative reforms, this edition in the series "Law Watch Analyses" covers two significant laws, i.e. Law on Execution of European Court of Human Rights Decisions and Law on Representation of the Republic of Macedonia in front of European Court of Human Rights (ECtHR). At the same time, given that ECtHR decisions encourage change of national laws, policies and practice, this analysis puts under scrutiny all judgments taken by the ECtHR that impose obligation for the Republic of Macedonia to take actions for reform. As in the previous editions published as part of the series "Law Watch Analyses", this document also puts its main focus on the respect of human rights. However, this time the analysis is developed through the prism of respect of human rights guaranteed by the European Convention of Human Rights (ECHR).

This analysis' goal is to assess both, the operation of in-county bodies authorized for implementation of ECtHR judgments, and the extent of compliance with ECtHR recommendations to amend the national legislation for the purpose of protection of human rights. The analysis gives an assessment of the rate of successfulness of adopted reforms and their compliance with the Convention (for example, amendments aimed at respecting the principle of trial within reasonable deadlines).

This detailed analysis aims to identify weaknesses into the established system for implementation of ECtHR decisions and offers recommendations to successfully overcome such problems. It is precisely the implementation of ECtHR decisions that is crucial for provision of fair trial standards, and therefore, state institutions, particularly the courts, need to devote close attention to relevant implementation of decisions.

The series "Law Watch Analyses" is part of the sub-program "Legislation Approximation" implemented by the Foundation Open Society, whose main goal is to advocate for appropriate enforcement of newly adopted legislation related to the process of approximating national laws to the EU *acquis*.

From the Editors

INTRODUCTION - GOAL AND METHODOLOGY

The present analysis addressing execution of judgments taken by the European Court of Human Rights (hereinafter: ECtHR or the Court), which is a body of the Council of Europe (hereinafter: CoE or the Council), in the Republic of Macedonia attempts to monitor the implementation of ECtHR judgments in the context of the broader understanding of the Court's judgments as basis for changes that should ensure better protection of human rights on national level.

The analysis aims to provide an accurate image on the current state-of-affairs related to execution of final judgments taken by ECtHR against the Republic of Macedonia, in particular by emphasizing the messages incorporated in these judgments, identifying the changes that have been introduced or should be introduced as part of execution of ECtHR judgments and detecting the problems that affect their implementation (in terms of individual and general measures).

Starting from this defined goal, the analysis targets:

1. Normative and institutional changes made in the Republic of Macedonia and aimed to implement ECtHR judgments;
2. Performance-related challenges of newly-established institutions, pursuant to their mandate;
3. Practices related to execution of ECtHR judgments in the Republic of Macedonia;
4. Actions taken upon recommendations integrated in ECtHR judgments and implementation of individual and general measures related to specific cases.

The methodology applied in development of this report includes[1]:

1 More information on the data collection methodology, sources of information and analysis methods are given in ANNEX 1.

1. Analysis of the Law on Execution of ECtHR Decisions[2] and the Law on Representation of the Republic of Macedonia in front of ECtHR (Government Agent);[3]
2. Analysis of documents on previous activities taken by various competent institutions;
3. Information on execution of ECtHR judgments available as part of official data of the Council of Europe, ECtHR and the Committee of Ministers (hereinafter: CM or the Committee), relevant state and judicial authorities;
4. Analysis of all judgments that should be executed by the Republic of Macedonia (taken in the period 2002-2012).

This analysis is intended for a broad scope of users: Parliament of the Republic of Macedonia, Government of the Republic of Macedonia, Constitutional Court, Supreme Court and all other courts, attorneys-at-law and non-governmental organizations, as well as other civil society representatives (organizations and individuals) profiled in the field of promotion and protection of human rights.

This analysis is based on the assumption that as the number of institutions involved in supervision of execution of ECtHR judgments is increasing, implementation of comprehensive changes and possibility for implementation of minimum changes committed to by the State become more unlikely.

Moreover, the analysis should make a contribution to the development of a system for easier and more efficient implementation of ECtHR judgments, as well as introduction of legislative, institutional and practical changes that should ultimately lead to a stronger system for protection of human rights in the Republic of Macedonia, reduction/prevention of violations and adequate redress for the victims whose fundamental rights and freedoms have been infringed.

2 *Official Gazette of the Republic of Macedonia* no. 67/2009
3 *Official Gazette of the Republic of Macedonia* no. 67/2009

1. EUROPEAN CONVENTION ON HUMAN RIGHTS AND MACEDONIA'S COMMITMENTS UNDER ECHR

By ratifying the European Convention on Human Rights[4] (hereinafter: ECHR or the Convention)[5], the Republic of Macedonia has committed:

- To secure to everyone within its jurisdiction, the rights and freedoms defined in the Convention.[6]

This means that all rights and freedoms defined in the individual articles of the Convention belong to everyone on the territory (within the jurisdiction) of the State. The State has committed to create conditions whereby all individuals on its territory can exercise these rights.

- Not to destroy or limit the rights and freedoms to a greater extent than is provided for in the Convention.[7]

This means that the State cannot take any actions or create any situations that might lead to inability for or difficulties in enjoying and exercising the rights and freedoms provided for in the Convention. There are certain limitations related to exercise of certain rights when they are in collision with the exercise of rights by the others, which the State may define in terms of specific rights and specific situations. However, none of these limitations should be contrary to the provisions from the Convention nor should exceed the limitations provided for in the Convention.

- To provide protection in cases of violation of rights and freedoms.[8]

4 Republic of Macedonia ratified the European Convention on Human Rights on 10 April 1997.

5 See ANNEX 3: Brief Introduction to the Republic of Macedonia's Commitments under ECHR.

6 Article 1 of the ECHR

7 Article 17 of the ECHR

8 Article 6 of the ECHR

This means that the State has committed to develop a system of protection mechanisms (institutions and procedures) that would guarantee that all individuals who believe their rights have been violated are entitled to adequate, efficient and effective protection and that, whenever possible, they shall be entitled to redress and/or conditions shall be created for exercise of the right that has been violated.

» To respect and implement the judgments of ECtHR and to eliminate the consequences from the damages caused, in compliance with the decision/judgment taken by ECtHR.[9]

This means that the State has committed to accept ECtHR decisions/judgments, to create institutions that will distribute them to relevant national structures, to pay the redress awarded, to create conditions for implementation of individual and general measures and to duly care for adequate completion of cases (possibility for returning the case for re-examination at domestic courts).

ECtHR work is completed when the judgment becomes final. However, this does not imply completion of all proceedings in the cases. Actually, from this moment the State is responsible to take follow-up actions. All final decisions of the Court need to be executed by the State that has assumed this obligation pursuant to Article 46 of the ECHR. Execution of ECtHR judgments is completed at the moment when the Committee of Ministers takes a final resolution whereby it determines that the State has fulfilled its obligations.

For the applicants, execution of ECtHR judgments means elimination of the violation and its consequences, and includes:

» Initial redress (as awarded by the Court and to be paid by the State). Initial redress is not related to the applicant's case led in front of domestic courts/bodies, but rather to the established fact that the rights defined in the ECHR have been violated. This means that the amount of funds awarded as redress does not imply an amount that resolves the dispute led by the concerned party in Macedonia, but only the amount awarded to the applicant in the form of reimbursement for damages caused by the fact that the dispute in question was led in a manner that failed to protect his/her rights guaranteed under the ECHR.

» Right to have the situation reversed to the conditions before the violation. The domestic legal system must protect the rights. However, it obviously failed in doing so (as established in ECtHR

9 Articles 42, 44 and 46 of the ECHR

judgment) and now all actions possible should be taken to guarantee that the applicant has the possibility to protect his/her rights in front of domestic courts.

- Right to have the consequences of the violation eliminated. Whenever possible, actions should be taken to eliminate or minimize the negative consequences for the claimant, which have occurred due to inadequate application of the ECHR.
- Right to indemnity if the situation cannot be restored to the conditions before the violation and if the consequences thereof cannot be eliminated.

The State's general obligation is fulfilled at the moment when measures are taken and changes are made with a view to prevent future occurrence of same or similar violations.

One case can be ended by means of judgment, decision, settlement or unilateral declaration. Settlements and unilateral declarations do not mean that ECtHR has found no grounds for initiation of proceedings, but that prior to the completion of proceedings in front of ECtHR, the State has acknowledged its mistake and located the problem. Settlements mean that there were no arguments in defence of the State, i.e., the State cannot find adequate and sufficient arguments that would justify its proceedings although it still considers that the right has not been violated. Unilateral declarations mean that the State, without further court proceedings, has acknowledged the violation of the applicant's right (it is aware of the violation and is ready to assume responsibility thereof).

The obligation on executing ECtHR judgments originates in the State's failure to fulfil its primary commitments, as set forth in Article 1 of the Convention (to secure for everybody within its jurisdiction the rights defined in the Convention). So, the primary starting point is the fact that the State has not fulfilled its commitments assumed under ECHR and therefore it must be held responsible, but it must also find ways to guarantee that the violation will not be repeated. Adequate execution of ECtHR decisions provides best evidence on ECtHR's effectiveness in the light of protecting human rights and freedoms.[10]

The State's implementation of ECtHR judgments and decisions[11] is supervised by the Committee of Ministers of the Council of Europe[12];

10 See ANNEX 4: Schematic Overview of Execution of ECtHR Judgments.

11 A judgment represents a closure of a particular case which ECtHR admitted and in which it established violation of a certain right. A decision is taken to resolve all stages in the proceedings related to the application or to close a case where violation of a certain right has not been found.

12 Article 46 of the ECHR

however, it is the concerned State that stipulates the measures, procedures and institutions necessary for implementation of ECtHR decisions. For that purpose, the Committee of Ministers adopted special rules concerning the application of Article 46 and Articles 39 to 41 of the ECHR.[13]

Main goals of ECtHR judgments are:

- To resolve a particular case in a manner that does not violate human rights, i.e., to reach a solution in compliance with the Convention on Human Rights;
- To entitle the applicant to adequate redress for the violation of his/her rights in a manner that would restore, to the greatest extent possible, the situation that existed before the violation (*restitution in integrum*);[14]
- To order the State to make changes in the domestic legislation and practices that would ensure better conditions for exercise and protection of rights and freedoms as guaranteed in the Convention.

Accordingly, the Committee of Ministers is tasked to examine whether:

- just satisfaction awarded by the Court as initial redress has been paid;
- individual measures have been taken to ensure that the violation ceased and that the damaged party is put, as far as possible, in the same situation the party enjoyed prior to the violation (*restitutio in integrum)*. Only in cases where *restitutio in intergrum* is not possible, just satisfaction should be pursued. The phrase that establishment of a violation *per se* is a satisfaction for the applicant implies an obligation for the State to eliminate all consequences of the violation and to introduce changes that would lead to a situation as if the violation did not exist (by *ex tunc action);*
- general measures have been adopted, preventing new violations similar to that or those found, or putting an end to continuing

13 Rules of the Committee of Ministers for Supervision of Execution of Judgments and of Terms of Friendly Settlements. Available at: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282006%29964/4.4&Language=lanEnglish&Ver=app4&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

14 Case of *Papamichalopoulos and Others v. Greece,* judgment (Article 50) of 31 October 1995, Series A No. 330-B, para. 34 etseq., where it refers to the dictum of the Permanent International Court of Justice in the case of *Chorzow Factory*.

violations. This obligation is also valid in cases where the case is resolved by means of settlement.

Committee of Ministers supervises implementation of ECtHR judgments under standard or enforced procedure.

Under the standard procedure, the Committee of Ministers does not have an active role, but rather takes formal decisions whereby it notes the progress made in regard to execution (for example: receipt of an action plan, expressed satisfaction with the course of judgment's execution or notification that judgment's execution is completed).

Under the enforced procedure, the Committee of Ministers assumes an active role that implies ordering the State to take specific tasks or setting specific timeframes for the State's action. The active role is manifested by assistance in preparation of action plans or expertise assistance as regards the type of measures envisaged.

A case is supervised under the enforced procedure when it necessitates immediate individual measures, in bilateral/multilateral cases, in case of a pilot judgment or in case of complex and substantive issues.[15]

When the Committee of Ministers considers that these measures and actions are fulfilled, it adopts a resolution whereby it closes the case presented to ECtHR for reconsideration.[16]

The second level of implementation of ECtHR judgments and decisions concerns the changes in the domestic legislation and practices, not only in relation to implementation of judgments taken in specific cases led against the Republic of Macedonia, but also in regard to ECtHR judgments taken against other States in cases that are also relevant for the Republic of Macedonia. In that, due consideration should be made of the fact that ECtHR examines all future cases in terms of their connection to past cases of the same type. This means that national level actions are under double supervision: by the Committee of Ministers and by the Court.

15 Enhanced supervision was applied in the execution of ECtHR judgment taken in the case of *Radko and Paunkovski v. the Republic of Macedonia* (application no. 74651/01, judgment of 15 January 2009). This application concerns Article 11 of the ECHR. The applicants complained of being prevented to register an association of citizens.

16 ANNEX 5 provides an example of a Resolution whereby execution of ECtHR judgment is considered complete (Resolution CM/resdh (2011) 81 Execution of judgments taken by the European Court of Human Rights in the cases of *Dumanovski, Docevski & Blage Ilievski v. the Republic of Macedonia)*.

Therefore, should it find necessary, the Court does not comment only on the domestic legislation, but also on the changes integrated therein on the basis of ECtHR judgments taken in the past.

2. LEGAL AND INSTITUTIONAL FRAMEWORK FOR EXECUTION OF ECTHR JUDGMENTS

In the last 10 years, practices related to execution of ECtHR judgments are characterized by absence of legal regulations, lack of adequate institutional support and confusion in terms of jurisdiction for execution of judgments.

From the delivery of first judgments taken against the Republic of Macedonia to present (2002-2012), the development of legal and institutional framework for implementation of judgments is progressing very slowly and thus affects the number of closed cases (final resolution taken by the Committee of Ministers of the Council of Europe).

In its 2007 Annual Report[17], the Government Agent, responsible for representation of the Republic of Macedonia in front of ECtHR, recommended adoption of relevant legislation for supervision of execution of ECtHR judgments and adequate institutional solution that would enable implementation of individual and general measures:

> *"It is stressed that the Government Agent or the Ministry of Justice, where the former is organizationally positioned, except for actions taken in relation to translation and dissemination of ECtHR decisions, are not in a position to guarantee realization of what is expected from the Government. This is mainly due to the fact that the judgments concern different areas [of human rights] and thus necessitate involvement and commitment on the part of different institutions and bodies and specific obligations and actions that need to be taken within strictly defined deadlines. All these need to be compiled in a specific action plan to be submitted to the Council of Europe, which will supervise the process on execution of judgments and should it*

17 http://www.pravda.gov.mk/presudi2012.asp?lang=mak&id=7003

establishes quality performance of actions and measures taken by the State, the case is considered executed/closed. The Government Agent bases its request on the fact that the Council of Europe has already noted non-execution of ECtHR judgments in regard to general and individual measures, especially the individual legislative measures taken with a view to correct the violation of the applicant's rights. The Government Agent locates the problem in the non-defined system on execution of ECtHR judgments, as well as the manner of notifying the Council of Europe and the Committee of Ministers about the measures taken to implement ECtHR judgments. For that purpose, the Government Agent is of the opinion that the best course of action would be to design a legal solution for the entire process by the end of 2008, which in future would prevent omissions or inconsistencies."[18]

2.1. LEGISLATIVE SOLUTIONS

The process for adoption of legislation governing the execution of ECtHR judgments started as late as 2008 (while the enforcement of the Law on Execution of ECtHR Decisions started in 2012). This means that from 2002 (when first judgments for Macedonia were delivered, including the judgments reached by means of friendly settlement) to present, the State is taking only occasional and erratic measures that are not conductive to adequate and full implementation of ECtHR final judgments, and thus endangers the entire system for protection of human rights and freedoms.

In 2008, the Ministry of Justice, having in mind the Recommendation of the Council of Europe CM/Rec(2008)2 and Resolution no. 1516 (2006), started to prepare a legal text on the establishment of a system for execution of ECtHR judgments. The Law on Execution of ECtHR Decisions (hereinafter: the Law) was adopted in 2009,[19] but its application was postponed by the effect of Article 31 of the Law, which reads:

"This Law shall enter in effect on the eight day from its publication in the 'Official Gazette of the Republic of Macedonia', while its application shall start on the day when the Interdisciplinary Commission is established."

In formal terms, the Law contains the basic solutions that should enable execution of ECtHR judgments. Moreover, the Law provides definition of

18 http://www.pravda.gov.mk/documents/VAgodizvestaj2007.pdf

19 *Official Gazette of the Republic of Macedonia* no. 67/2009

terms related to execution, main parameters of the organizational set-up, procedures and responsible officers/institutions.

Article 2 of the Law reads:

"Execution of the Court's decisions shall be secured ***by means of payment of amounts awarded*** *to the applicants as initial redress, as well as adoption and implementation of* ***individual and general measures*** *aimed to eliminate the violation and its consequences, including the reasons that have led to submission of complaints in front of the Court and adequate prevention of same or similar violations."*

Article 5 of the Law defines the three basic activities that the State should take as part of the process for execution of ECtHR decisions:

11. 'Just redress' shall mean a monetary compensation that the Court, by means of its decision, has awarded to the applicant after having established that the violation of the Convention and the Protocols thereto have led to pecuniary or non-pecuniary damages for the applicant;

12. 'Individual measures' shall mean measures that the State, in the capacity of a Contracting State to the Convention, adopts as part of the domestic legal system with a view to eliminate the specific violation made against the applicant, as established by the Court, as well as with a view to eliminate the possible consequences of the violation. The State shall be at liberty to select the means used to realize its legal obligations; and

13. 'General measures' shall mean a set of system measures, legislative changes, changes to judicial and administrative practices and proceedings of competent state bodies, as well as all other measures that the State takes with a view to effectively overcome the identified legal shortfalls in the system, the insufficient legal regulations in place, as well as the non-alignment of the national legislation with provisions and standards upheld by ECtHR and other internationally accepted standards and obligations that result in violations of the Convention, in compliance with the merits and the guidelines provided by the Court in its judgments."

Legislative solutions that stipulate the procedure on taking actions upon ECtHR judgments do not refer to preparation and submission of an action plan by the State as follow-up to ECtHR judgments. The need for this action plan was acknowledged by the Committee of Ministers of the

Council of Europe[20] in 2010. Republic of Macedonia did not respond to this development with adequate changes in its domestic legislation.[21]

Law-stipulated deadlines for processing individual stages of the execution process do not correspond with these new developments. Namely, contrary to the insistence on the part of the Committee of Ministers to have the action plan drafted within the shortest time possible (i.e., within six months from the final judgment's delivery), Article 23 of the Law stipulates a deadline of three months for the Bureau to notify the Interdisciplinary Commission on the finality of the Court's decision, which leaves a short span of time for preparation of the action plan. An impression is created that the Law does not refer to relations with the Committee of Ministers and cooperation in execution of judgments, which is duly noted in several official documents of the Committee.[22]

The Law omitted the Constitutional Court as an important factor in protection of human rights (pursuant to the Constitution of the Republic of Macedonia) and as part and parcel of the institutional network tasked with execution of ECtHR judgments. Moreover, the Constitutional Court is not mentioned as an entity comprising the Interdisciplinary Commission, or as an entity responsible for or in any way related to execution of ECtHR judgments.

Law on Execution of ECtHR Decisions stipulates responsibilities for judicial bodies that have taken the court rulings or have led the proceedings contested in front of ECtHR in cases in which ECtHR has taken a judgment, i.e., in cases in which the State made a unilateral declaration or reached a friendly settlement with the applicant, provided it has acknowledged its mistake. In the absence of such legal solution that would be integral part of the execution process and would also imply responsibility of the involved judicial body, the question is raised about the manner in which changes will be implemented in practice, given that judges and public prosecutors are not subject to sanctions, even in cases of continuous repetition of identical violations of the ECHR.

20 https://wcd.coe.int/ViewDoc.jsp?id=1662781&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

21 To present, the Republic of Macedonia submitted only two action plans : (https://wcd.coe.int/ViewDoc.jsp?id=2030561&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383) and https://wcd.coe.int/ViewDoc.jsp?id=1810101&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

22 https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282006%29964/4.4&Language=lanEnglish&Ver=app4&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

Article 75 of the Law on Courts provides for this opportunity, but the practice on dismissal of judges pursuant to this article does not correspond to judgments taken by ECtHR.

On the other hand, the Law on Public Prosecution does not stipulate this type of responsibility.

Rules of Procedure of the Interdisciplinary Commission for Execution of ECtHR Decisions[23] do not establish the required procedures for implementation of ECtHR judgments. Despite the fact that these Rules were adopted by the end of 2012, they do not include preparation of the action plan and do not provide specific guidelines on resolving conflict of interests concerning the Bureau's double role (representation and execution).

2.2. LAW-STIPULATED INSTITUTIONS

The Law refers to two structures tasked with enabling and supervision of execution of ECtHR decisions, those being:

- **Interdisciplinary Commission** on execution of decisions taken by the European Court of Human Rights (hereinafter: the Interdisciplinary Commission), which according to the Law is the key structure competent for execution of ECtHR judgments;
- **Bureau for Representation of the Republic of Macedonia in front of the European Court of Human Rights** (hereinafter: the Bureau), which according to the Law is the body responsible for performance of expert and administrative matters of the Interdisciplinary Commission.

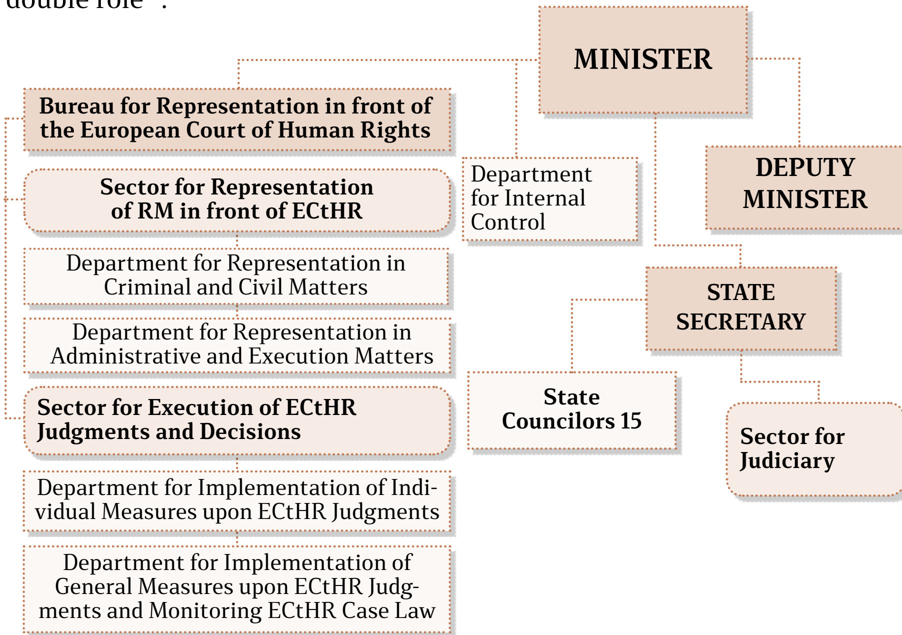
According to the Law on Representation of the Republic of Macedonia in front of ECtHR,[24] the Bureau is the state administration body that is organizationally located in the Ministry of Justice and tasked to perform all matters related to representation of and actions on the part of the Republic of Macedonia in front of the Court, as well as to perform other expert matters falling under the competences of the Ministry of Justice. On the other hand, according to the Law on Execution of ECtHR Decisions,[25] the Bureau is competent to execute ECtHR judgments, in the capacity of

23 Rules of Procedures were adopted on the first meeting of the Interdisciplinary Commission (held in November 2012).

24 *Official Gazette of the Republic of Macedonia* no. 67/2009

25 *Official Gazette of the Republic of Macedonia* no. 67/2009

being an integral part of the Interdisciplinary Commission. Ministry of Justice's organogram provides a special position for the Bureau, given its double role[26]:



According to this organogram, the Bureau for Representation in front of the European Court of Human Rights is comprised of two sectors, those being: sector for representation in front of ECtHR and sector for execution of ECtHR judgements and decisions.

A key structure that should guarantee execution of ECtHR judgments is the newly established Interdisciplinary Commission. Article 29 of the Law on Execution of ECtHR Decisions stipulates that the Government of the Republic of Macedonia shall establish the Interdisciplinary Commission within a period of two months from the day the Law enters in effect. Contrary to this legal provision, the Commission was established three years later and held its first meeting by the end of November 2012. This is particularly relevant having in mind the fact that the Law's enforcement is conditioned with the Commission's establishment (Article 31). This means that the Law's enforcement started as late as February 2012 (i.e., the day when the Commission was established).

The Interdisciplinary Commission is not envisaged as standing structure with permanent seat and is not given the status of separate entity. On the contrary, it is envisaged as flexible group of different entities united under the chairmanship of the Minister of Justice.

26 http://www.pravda.gov.mk/organizacija.asp?lang=mak

Article 8 of the Law on Execution of ECtHR Decisions stipulates that:

"The Interdisciplinary Commission shall be comprised of the officials heading the Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs, Ministry of Labour and Social Policy, Ministry of Finance, Ministry of Education and Science, Ministry of Health, Ministry of Transport and Communications and Ministry of Local Self-Government. By the virtue of the office they perform, President of the Judicial Council of the Republic of Macedonia, President of the Supreme Court of the Republic of Macedonia, President of the Council of Public Prosecutors of the Republic of Macedonia and the Government Agent shall also be members of the Interdisciplinary Commission."[27]

This broad group of entities comprising the Commission is actually entrusted with serious competences that require continuous cooperation, joint action and high level of knowledge. Namely, competences of the Interdisciplinary Commission are stipulated in Article 11 of the Law[28] and

27 It is interesting to note that the Constitutional Court is not included in the composition of this Commission. This is contrary to the role assigned to the Constitutional Court in protecting human rights and freedoms pursuant to the Constitution, as well as the necessity that, prior to initiation of a procedure in front of ECtHR, the applicant must exhaust the remedy offered by the Constitutional Court. This situation raises additional concerns when reconsidered against the fact that ECtHR denied proceedings in certain cases on the basis of inadmissibility due to the fact that they were not processed by the Constitutional Court.
In this way, the Constitutional Court is exempted of any obligation to take part in execution of ECtHR judgments, supervise this process, and participate in policy-making and initiation of relevant changes on national level. Moreover, this means that one of the most important mechanisms for protection of human rights in the Republic of Macedonia is exempted from the process on deliberating the violations of the ECHR, but also assuming responsibility for its decisions.

28 1) analysis of the Court's judgments taken against Republic of Macedonia, in order to determine the reasons that have led to the violation;
2) issuing recommendations for individual and general measures to be taken by competent state bodies, in order to eradicate the violation established by the Court and in order to eliminate its consequences;
3) issuing proposals to improve the legal regulation on protection of human rights;
4) supervising the execution of the Court's decisions;
5) provision and exchange of information and data in the field of execution of the Court's decisions;
6) supervising the existing system on execution of measures and proposing measures to improve the system; and
7) other matters, as stipulated by law.

refer to the need for establishment of a mechanism that should, with great independence, analyse ECtHR judgements, define measures for changes, actively supervise all stages of the execution process and continuously promote the monitoring and supervision system. However, any body that is comprised of nine line ministers and presidents of the highest judicial bodies is destitute to fail before it starts operation.

Obviously, the Commission is envisaged as a high level structure that would deliberate on ECtHR judgments, take relevant conclusions related to legal and institutional changes that need to be initiated and implemented, and exert visible influence aimed to change the legislation and the practices that have led to violations of human rights, i.e., have led to absence of relevant protection of human rights. At first glance, competences entrusted to the Commission correspond with the commitments assumed by Macedonia under the ECHR and their implementation can result in creation of conditions for exercise and protection of human rights on national level at times they are violated or limited. Nevertheless, at the same time previous experiences show that commissions of such composition are not successful in fulfilling their mandate due to several reasons.[29]

First group of problems is related to the Interdisciplinary Commission:

a) Problems with the Commission's composition (members). Contrary to the high offices held by its members, the Commission's work is usually performed (and its meetings are attended) by representatives from relevant line ministries, but of lower ranks. In the absence of clear division of competences, pre-defined deputy members and the lowest level of representatives in the Commission, the meetings of this type of commissions are usually attended by lower rank civil servants in the administration.

b) Replacement of high rank officials with civil servants of lower ranks in the administration usually leads to absence of general discussions on the legal, institutional and practical sources and consequences of ECtHR judgments, prevents taking of actions pursuant to recommendations for individual and general measures and renders the Commission unconstructive in relation to proposing legal changes.

29 For example, the National Commission on the Rights of Children (http://www.nkpd.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=788)

c) Also, appointing the Minister of Justice as *primus inter pares*[30] further complicates the superior-inferior relations that are being created within the Interdisciplinary Commission and, in general, the expectation that other members of the Interdisciplinary Commission will execute the orders put forward by the above said minister. In such circumstances, the impression is created about a certain parallelism between this commission and the role played by the Government in execution of ECtHR judgments (namely, the Government is the one that should adopt execution decisions and not the line ministries).

The idea behind Interdisciplinary Commission's composition entraps its future functionality, both in terms of maintaining the same composition on all meetings and in terms of performance of commission's competences. This composition is more suitable for a structure that would deliberate, debate and adopt general positions rather than an operative mechanism that should guarantee execution of ECtHR judgments.

Second group of problems concerns the Bureau:

a) Problems with the role assigned to the Government Agent (as Director of the Bureau) in the work of the Interdisciplinary Commission. Government Agent's double role (as the State's representative in front of ECtHR and as key entity in execution of ECtHR judgments) could be counterproductive and source of conflict of interests.

   The Law that governs Bureau's structure and competences was adopted at the same time when the Law on Execution of ECtHR

30 Except for the problematic role of the Minister of Justice as a superior member, worrying is also the passive and ignorant attitude towards the Ministry of Justice, which is not only the institution where the Bureau is organizationally situated, but holds special jurisdiction as well (the Ministry of Justice is directly responsible for the Bureau's performance). Moreover, the Minister of Justice is the President of the Interdisciplinary Commission and, pursuant to the Law and the Rules of Procedure, is the main instigator of commission's work.
Based on FOI responses provided by the Ministry of Justice and endorsed by the Minister of Justice, contrary to the key role given to this line ministry and the minister, a conclusion is inferred that that the Ministry of Justice does not dispose with essential information needed for performance of its competences. For example, on the question whether the Ministry has implemented a procedure on establishing responsibility for non-execution of ECtHR decisions in compliance with Article 28 of the Law, procedure on initiation of legislative changes in compliance with Article 11, developed procedures on supervising execution of ECtHR decisions in compliance with Article 15, the Ministry of Justice responded that it does not dispose with the requested information.

Decisions was enacted.[31] Both pieces of legislation do not include references to the other, but their provisions overlap in regard to competences assigned to the Bureau, whose organizational structure includes a sector for execution of ECtHR judgments.

Given that the Law on Execution of ECtHR Decisions does not refer to the sector for execution, but to the Bureau, the legitimate question on the conflict of interests remains open. Actually, the same service, the same person who in a given procedure represented the State and contested the claimant's allegations, also appears as the key factor in execution of the relevant judgment that negates the arguments presented by him/her during the proceedings led in front of ECtHR.[32]

The Bureau's primary role is to represent the State in front of ECtHR in cases when it is alleged that the State has violated the claimant's rights. However, the Law on Representation in front of ECtHR does not refer to the Bureau's role stipulated under the Law on Execution of ECtHR Decisions.

b) This situation is further complicated with the fact that the Bureau can also appear as the single entity responsible for execution of ECtHR judgments. The fact that according to the Law, the Bureau for Representation in front of ECtHR is envisaged as an institution competent for performance of expert and administrative matters of the Interdisciplinary Commission and given the flexibility of Interdisciplinary Commission's composition, one can expect that the Bureau would become a substitute for the Commission, i.e., it would appear as the main entity responsible for implementation of competences stipulated by the Law and assigned to the Commission.

   This might lead to a situation where the legislative, executive and judicial branch of government would act only upon reports submitted by the Bureau's Director (who is also entrusted with execution of ECtHR judgments) and in that lose sight of the gravity of violations committed by the State, i.e., shortfalls in implementation of State's commitments under the ECHR.

31 *Official Gazette of the Republic of Macedonia* no. 67/2009

32 Basic guidelines are given by the Commissioner for Human Rights (http://www.coe.int/t/commissioner/Viewpoints/090831_en.asp). The development process can be followed with several states. For example, in the United Kingdom implementation of ECtHR judgments falls under the competences of a broad commission tasked with implementation of the Rights Law (http://www.justice.gov.uk/downloads/publications/policy/moj/responding-human-rights-judgments.pdf).

The Government Agent's primary role is representing and defending the State as a party in the proceedings initiated in front of ECtHR, i.e., acting as the State's representative and defender of its interests. At the same time, it appears as the entity responsible for execution of ECtHR whereby it should defend the interests of the claimant.

c) Previous practices[33] show that, to a large extent, the Government's decisions are reduced to decision-making on ECtHR judgments' financial implications, without engaging in broader discussion of legal, institutional and practical changes needed, while the legislative authorities (the Parliament) are not presented with any information related to ECtHR judgments and their execution (with the exception of a summary annual report prepared by the Government Agent, i.e., the Bureau). It seems that in a situation like this, it could be expected for the sector for execution of ECtHR judgments and decisions (as integral part of the Bureau for Representation in front of ECtHR, which in turn is part of the organizational structure of the Ministry of Justice) to absorb the Commission' work on one side, but - unable to substitute the Government's role - to reduce the overall work to mere monitoring of judgments' execution concerned only with the technical aspects, in that failing to analyse the judgments and initiate changes, on the other side.

2.3. ACTIVITIES

Problems affecting the execution of ECtHR judgments were noted by the Committee of Ministers back in 2008, when a total of 17 final judgments taken by ECtHR[34] were pending implementation. This triggered the visit to the Republic of Macedonia by representatives from the Department for Execution of ECtHR Judgments who held meetings with all entities competent for execution of ECtHR judgments (Minister of Justice, Constitutional Court of the Republic of Macedonia[35], Supreme Court of the Republic of Macedonia, Public Prosecution of the Republic of Macedonia and Interdisciplinary Body on Human Rights in the Republic

33 Summary information from documents obtained by means of Freedom of Information (FOI) applications.

34 http://www.coe.int/t/dghl/monitoring/execution/Documents/Publications_en.asp

35 Although the Constitutional Court does not recognize its role in execution of ECtHR judgments.

of Macedonia).[36] All changes made by the Republic of Macedonia in the past period were presented on these meetings, while the Government Agent concluded that it:

> *"...locates the problem in the non-defined system on execution of ECtHR judgments, as well as in the reporting mechanism to the Council of Europe and the Committee of Ministers on the measures taken with a view to execute ECtHR judgments.* [37]

In 2012, a total of 121 final judgments were pending implementation[38] (and failure to do so can no longer be justified with the inadequate reporting to the Council of Europe on changes made or non-defined system on execution of judgments).

2.3.1. Activities of the Interdisciplinary Commission

At this moment it is difficult to conclude whether the Interdisciplinary Commission has taken any activities and it is difficult to assess its performance, especially because it was established in February 2012 and held its first meeting in late November 2012. Therefore, actual enforcement of the Law on Execution of ECtHR Decisions cannot be assessed by means of an analysis of activities taken by this Commission.

From the delivery of ECtHR's first judgments to present, their execution falls under the jurisdiction of the Government Agent, who is an employee at the Ministry of Justice (also appointed as the Bureau's Director in 2011). Hence, activities related to monitoring of the execution of ECtHR judgments are exclusively related to the Government Agent's work.

2.3.2. Activities of the Government Agent

In addition to responsibilities related to State's representation in front of ECtHR, in this period, the Government Agent/the Bureau takes other activities related to execution of ECtHR judgments, as given below.

Publication of ECtHR judgments and decisions

Decisions are translated and published on the Ministry of Justice's official website.[39] This website also hosts the reports developed by the Government Agent in the period 2006 – 2011.

36 http://www.pravda.gov.mk/documents/Informacija.pdf
37 http://www.pravda.gov.mk/documents/Informacija.pdf (page 5)
38 http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=MKD&SectionCode=
39 http://www.pravda.gov.mk/presudi2012.asp?lang=mak&id=7003

Ministry of Justice's official website includes the judgments and reports of the Government Agent, but does not provide any information on activities taken with a view to implement them. Except for the summary information included in the annual reports developed by the Government Agent and focusing on payment of redress awarded, there are no other data on specific activities taken in relation to individual and general measures required. Ministry of Justice's website does not provide data on the state-of-affairs concerning execution of judgments/decisions and the entity responsible for their execution/supervision. Moreover, there are no data on general measures that need to be taken or are taken pursuant to the requirements set forth in ECtHR's individual judgments/decisions.

Distribution of ECtHR judgments

Despite the fact that the Law on Execution of ECtHR Decisions does not stipulate limited distribution of ECtHR decisions to interested entities[40], the Government Agent distributes them to a broad scope of entities, including the Supreme Court, Public Prosecution of the Republic of Macedonia, Courts of Appeal, first-instance courts directly related to the decision in question, Judicial Council, State Attorney, Ombudsman, Academy of Judges and Public Prosecutors, Bar Chamber, Association of Judges, Association of Public Prosecutors, Higher Public Prosecution Offices, the concerned public prosecution and, when involved, the Constitutional Court and possibly the Administrative Courts. However, given the fact that ECtHR judgments represent a source of law not only in terms of providing a basis for changes to the laws, but also in terms of individual recommendations, as well as the fact that it is expected for overall practices to be changed, not only the practices of directly concerned courts, it is logical to distribute ECtHR decisions to all entities in the judicial system. Having in mind that judgments and decisions are available on the Ministry of Justice's website, the Government Agent, by means of a circulation letter, can notify all judicial entities on the availability of any newly published judgment or decision taken against the Republic of Macedonia.

In conditions when the legal framework on distribution of judgments is very narrow, the Government Agent distributes the judgments according to its own assessment. Some entities that have been presented with ECtHR judgments do not recognize themselves as part of the distribution

40 Supreme Court of the Republic of Macedonia, Constitutional Court of the Republic of Macedonia, all Courts of Appeal, first-instance court and all other institutions or entities that were directly involved in the case in which ECtHR has taken a decision.

system. For example, in its FOI response, the Constitutional Court[41] informed that:

> *"The Bureau is not obliged to notify it [about the publication of ECtHR judgments], but does so on basis of own assessment and for the purpose of informing the court, however the Constitutional Court has no direct communication with ECtHR."*

Notifications on ECtHR judgments, distributed by the Government Agent to a given number of institutions, usually provide a brief overview of the case and the basic positions upheld by ECtHR, but often fail to indicate individual and general measures that need to be taken with a view to execute the judgement and fail to request an opinion from the addressed title on what needs to be done in that regard.

These notifications do not include serious analyses of judgments or positions taken by ECtHR and they do not establish the links to the national legislation in order to facilitate judgment's enforcement on the part of courts and public prosecution offices.

2.3.3. Activities related to payment of redress awarded

In the last period, execution of ECtHR decisions is reduced to minimum (it is limited only to payment of redress or monetary compensation as set in the settlement). There is no complete execution of judgments that would ensure full satisfaction of the parties and minimizing detrimental effects of the violation. Moreover, legal and institutional conditions are not being developed for the purpose of deferring repetition of same or similar violations in the future.

As a result, cases are not closed, which means they are not deleted from the list of ECtHR cases under supervision by the Committee of Ministers.[42] As from 2006, when the first judgments were delivered, and by the end of 2012, Republic of Macedonia was ordered to pay more than 1,300,000 EUR in redress.[43] This amount does not include default interest related to specific cases which also falls on the burden of Macedonia.

According to the Government Agent's reports in the last several years (especially from 2009 onwards),[44] payment of redress is late and default

41 FOI Response No. 4/12-3 from 9.11.2012

42 http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=MKD&SectionCode=

43 See ANNEX 6: Payments of Redress Awarded by ECtHR or Payments Pursuant to Amicable Settlements or Unilateral Declaration (2006-2012)

44 Actually, redress awarded by ECtHR was paid in due course only in 10% of

interest is not calculated for delayed payment (the number of damaged parties entitled to redress who wait for more than two years to be reimbursed is increasing).[45]

2.3.4. Fully executed judgments

According to data available on the website of the Committee of Ministers of the Council of Europe,[46] which is tasked to supervise implementation of judgments, only 19 from the total of 286 final cases[47] involving Republic of Macedonia are fully closed, which means that the Committee of Ministers is of the opinion that in these 19 cases the State has fully complied with its obligations related to payment of redress to the damaged party. This also means that all actions have been taken to reduce the damages caused by the violation, as well as general measures needed to defer repetition of similar cases in the future. In other words, only 6.6% of cases are closed. From the total number, 121 final judgments taken by ECtHR are under supervision by the Committee of Ministers of the Council of Europe.

Materials disclosed by and documents uploaded on the website of the Ministry of Justice do not allow identification of individual and general measures that are being implemented; the Secretariat on Legislation has not issued its assessment of materials presented by the Ministry of Justice and, consequently, the Government's conclusions concern only fulfilment of monetary obligations, rather than initiation of follow-up activities that would result in the changes needed.

2.3.5. Activities related to legislative changes

In the last period, several systematic changes were made and can be identified as general measures pursuant to the ECHR.[48]

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judgments, while the remaining share of them were paid after the deadline of three months expired, most commonly within a period of six months (2009 Annual Report of the Government Agent. Available at: http://www.pravda.gov.mk/documents/godisen%202009%20usvoen%20za%20objava.pdf)

45 For example, judgments taken in the cases of *Jasar, Sulejmanov and Trajkovski* are waiting for execution for almost three years now (2011 Annual Report of the Bureau. Available at: http://www.pravda.gov.mk/documents/Izvestaj-VA2012.pdf).

46 http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=MKD&SectionCode=

47 Cases are considered close when ECtHR takes a final judgment that cannot be contested in front of the Grand Chamber.

48 For more information on legislative changes see the section on individual cases.

First is the measure that concerns reducing the number of cases initiated in front of ECtHR on the grounds of undue court proceedings. 2008 amendments to the Law on Courts provided the possibility for initiation of procedure in front of the Supreme Court of the Republic of Macedonia concerning the length of court proceedings. This is a measure (special remedy) whereby the applicants are able to/must address the Supreme Court of the Republic of Macedonia before lodging a complaint in front of ECtHR. This instrument provides greater space for resolving the problem related to longevity of court proceedings on national level, but does not guarantee that the procedure itself would be shortened for the benefit of citizens. Continuous monitoring is needed to assess the Supreme Court's application of the remedy that implies protection of the right to trail within a reasonable time.

Second set of changes concerns legislative amendments on the possibility for re-examination of the case by the domestic courts upon the delivery of ECtHR judgment. This included the first change to the legislation that enabled return of cases for re-examination.[49] This is a major step forward in restoring the situation to its original state prior to the violation. However, the impression about further victimization of the victim of the violation remains valid. In practice this means that the

49 2005 Law on Litigation Procedure (*"Official Gazette of the Republic of Macedonia"* no. 79/2005) included a provision on re-examination of the case after the final judgment is taken by the European Court of Human Rights in Strasbourg.
Article 400
(1) In cases where the European Court of Human Rights has established a violation of certain human right or freedom provided for in the European Convention on Human Rights and Freedoms and the Additional Protocols to the Convention which the Republic of Macedonia has ratified, within a period of 30 days from the finality of the judgment taken by the European Court of Human Rights the claimant can motion an initiative in front of the first-instance court in the Republic of Macedonia that has taken the ruling by means of which a given human right or freedom has been violated in order to have the contested ruling reversed.
(2) Provisions on re-examination of the case shall be properly applied in the procedure referred to in paragraph (1) of this article.
(3) In the course of re-examination of the case, the courts shall be obliged to respect the legal positions expressed in the final judgment of the European Court of Human Rights that has established the violation of fundamental human rights and freedoms.
2004 amendments to the Law on Criminal Procedure (*"Official Gazette of the Republic of Macedonia"* no. 74/2004) introduced a new line under Article 392 that provides the possibility for re-examination of the case when "a decision taken by the European Court of Human Rights has established a violation of human rights and freedoms".

victim should yet again gather the strength to initiate another procedure and lead it through all judicial instances on national level. The interviews conducted with attorneys-at-law who have led procedures in Strasbourg (and who suggested their clients to use this possibility) provide the conclusion that their clients find it difficult to decide to repeat the court proceedings and are satisfied with the redress awarded to them.[50] This does not allow an assessment to be made whether the institutions "learned" the lesson and whether they will act in a manner that would not imply violation of human rights.[51]

50 This situation is confirmed in the official correspondence from several courts in Macedonia (Gostivar – Su.no. 78/13, Veles Su.no. 180/13 and 181/13, Stip – Su.no. 86/13, Skopje 1 – FOI.no.1/13). Basic Court Skopje 2 informed about re-trials in two cases (appeal no. 45150/05 and 49382/06). In the first case, court proceedings are completed, but the court ruling was appealed, while the second case is led as civil litigation for repeated proceedings (appeal no. 21994/07), in which the Court adopted a decision on rejecting the motion for repeated proceedings, confirmed by the Appeals Court in Bitola. Also, this court was presented with another motion for repeated proceedings in criminal matters, which was accepted and scheduled for hearing.

51 2011 Annual Report of the Government Agent. Available at: http://www.pravda.gov.mk/documents/IzvestajVA2012.pdf

3. SIGNIFICANT RECOMMENDATIONS AND GUIDELINES ISSUED BY THE COURT AND (NON)IMPLEMENTED CHANGES

ECtHR judgments are a specific source of law. Individual and general measures that need to be implemented as part of execution of ECtHR decisions imply legislative and institutional changes, as well as changes to established practices. By means of ECtHR judgments Macedonia receives a precedent law that in the past was applied only in changed format expressed by means of opinions issued by the Supreme Court. In this way, ECtHR judgments influence the case-law in the Republic of Macedonia and therefore individual measures referred therein must be considered a relevant source of law.

In its judgments (as separate section or as part of case analysis) ECtHR integrates certain recommendations that should serve as baseline for formulating individual and general measures. Despite the fact that emphasis is put on the State's discretionary right to define the measures needed, practices related to implementation of ECtHR judgments already demonstrate a trend of limiting these discretionary rights and issuance of targeted recommendations that leave little space for the State to pursue individual interpretation thereof.[52]

On the basis of all ECtHR judgments taken against the Republic of Macedonia to present, one can define several groups of recommendations and guidelines for changes that should be taken with a view to create

52 https://openaccess.leidenuniv.nl/bitstream/handle/1887/12942/A%20comparative%20view%20on%20the%20execution%20of%20judgments%20of%20the%20european%20court%20of%20human%20rights.pdf?sequence=2 (ECtHR 29 November 1991, Vermeirel Belgium. This case concerns the implementation of ECtHR, 13 June 1979, Marckx/Belgium)

conditions for adequate exercise of the rights defined in the ECHR and efficient protection thereof. Great number of cases concern violation of Article 6 of the Convention – right to a fair trial. Other violations are related to different articles including Article 5 (right to liberty and security), Article 3 (prohibition of torture), Article 13 (right to effective remedy), Article 1 of Protocol No. 1 (right to possession) and Article 11 (freedom of assembly and association).

3.1. VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

To present, most numerous are the violations established by ECtHR in relation to Article 6 of the Convention and this can be interpreted in different manner. Given number of cases concerns the period when the Convention entered in effect in Macedonia, i.e., 1 January 1998. Therefore, ECtHR could be presented only with applications about cases that have been postponed for years and that were not completed due to one or another reason. Consequently, non-completion of these cases even after the Convention entered in effect opened the possibility for so-called "individual petition", i.e., application in front of ECtHR that could pass the criterion related to time jurisdiction. Combined with the lack of knowledge on ECtHR mechanism, this resulted in a relatively low number of cases being processed by ECtHR in the first period after the ratification of the ECHR, while most dominant among them were applications lodged on the basis of violation of Article 6, more precisely, on the grounds of the length of court proceedings.

Other interpretations can be sought in ECtHR judgments. According to the nature of the issue they concern, they are divided into: a) basic i.e., technology and logistic problems; and b) essential problems. This division was made in order to identify the problems rooted in the legal system in the Republic of Macedonia. In that, the analysis of essential problems related to Article 6 (right to a fair trial) is not structured according to the type of court proceedings (civil, criminal or administrative), irrespective of the fact that the analysis does emphasize individual problems under each type of proceedings. Despite the specificity concerning the application of Article 6 in different types of court proceedings, this was done, *inter alia*, for the purpose of emphasizing the broad application of the said article in the overall judicial system, i.e., its universality for all branches of government when they decide on human rights.

A) Basic problems – Even in the first cases, i.e., the case of Atanasovic[53] (application no. 13886/02) in which ECtHR took a judgment in 2005, the Court starts with a basic indication. Namely, paragraph 36 of this judgement reads:

"The Court recalls that it is for the Contracting States to organize their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time."

The remark "organize the legal system" appears in a worryingly high number of cases initiated in the period 2002–2003 which the European Court of Human Rights judged in the course of 2006 and 2007 (see also case of Arsov, paragraph 40; case of Lickov, paragraph 26; case of Markovski, paragraphs 35-38; case of Milosevik, paragraph 25; case of MZT Learnica, paragraph 48; case of Rizova, paragraph 48; case of Dika, paragraph 57; etc.)

This identical remark - ***to organize the legal system*** – is indicated in large share of cases relating to Article 6, all the way to the case of Risteska (see paragraph 25) the judgment in which was taken in 2010, where ECtHR remarks:

"...The Court recalls that it is for the Contracting States to organize their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see Horvat v Croatia, application no. 51585/99, paragraph 59, ECHR 2001-VIII). In this context, it finds significant delays attributable to the first-instance court. The Court thus observes that it took nearly four years and seven months for that court to decide the applicant's case (see paragraph 11 above)."

In the meantime, Macedonia has made a series of legislative changes. Majority of key laws related to the judiciary system were adopted in the period 2005-2006 as a result of implementation of 2004 Strategy on

53 (Atanasovik) It is a matter of complicated inheritance procedure whose execution procedure lasted for more than 14 years. In this case, the Court established a violation of Article 13 of the Convention considering that the applicants had no effective remedy whereby they could raise the issue of the excessive length of the proceedings in their case, i.e. they were unable to exercise their "right to a trial within a reasonable time". Furthermore, the Court found that the length of proceedings, which are still pending at the time the judgment was taken, failed to satisfy the reasonable time requirement. Accordingly, there has been a violation of Article 6, paragraph 1 of the Convention.

Judicial Reforms. As part of this Strategy, the Law on Litigation Procedure and the Law on General Administrative Procedure were adopted in 2005 and 2006, respectively, the Law on Administrative Disputes was adopted in 2006, as well as the Law on Misdemeanours (2006) which stipulated transfer of competences related to misdemeanour proceedings from the courts to the state administration bodies. For the purpose of better organization of the judicial system, the new Law on Courts was adopted in 2006 and provided the basis for establishment of the Administrative Court in 2008. For the first time, this Law entrusted the Supreme Court with competences on decision-taking in disputes related to violation of the right to a trial within a reasonable time. The new Law on Criminal Procedure was adopted in 2010.

Of course, the key question is whether ECtHR's message concerning the organization of the legal system was fully understood and whether Macedonia succeeded in effectuating legislative changes that truly imply elimination of postponed or unduly proceedings. In terms of civil proceedings, the new Law on Litigation Procedure focused on developing an entire system of deadlines which should be observed by the judges *ex officio*. Deadlines were introduced in relation to submission of writs to the parties in the dispute, as well as preclusive deadlines for the parties, but also for the judges, in terms of strict period of time for taking actions calculated from the day the lawsuit was submitted. Precise deadlines were not stipulated only in terms of scheduling the main hearing. Indisputably, such deadlines are needed, but it is certain that the entire process, at best, would last at least 13 months until a decision is taken in the appeal procedure. Should the appeal decision imply returning the case for re-examination, the process would be extended by another 13 months. When combined with time periods related to lawsuit re-arrangement (which is frequently used by the courts) and one postponement of the main hearing, the total procedure time would be two and half years only for the court proceedings, without the administrative procedure that preceded the court proceedings, and without the period needed for execution of court rulings.

However, as early as the judgment taken in the case of Atanasovik (see paragraphs 37-39) or the judgment taken in the case of Arsov (see paragraph 43), ECtHR indicated that anterior proceedings, including administrative and/or civil proceedings, as well as posterior proceedings, including the execution procedure, are an integral and inseparable part of the rights guaranteed under Article 6 of the Convention. Here, notice should be made of the Court's remark from paragraph 28 of the judgment taken in the case of Docevski (see below, special diligence cases), which

concerns the need for consideration of all proceedings as one integral procedure:

"...On the other hand, the Court is not persuaded by the Government's argument that the proceedings complained of should not be considered as one single procedure, as the administrative authorities and the Supreme Court were considering the same subject-matter throughout. The three separate sets of proceedings referred to by the Government formed integral part of these proceedings which ended on 9 May 2005 when the Supreme Court's decision was served on the applicant. Accordingly, the relevant period which falls within the Court's competence was about eight years and one month for two levels of jurisdiction."

This provides the conclusion that legislative changes make due consideration only of narrowly-defined court proceedings and thus additionally complicate and delay the preceding administrative procedure by introducing the Higher Administrative Court as the second judicial instance in administrative disputes, which is most probably preceded by an appeal procedure led in front of second-instance commission or newly-established State Commission on Decision-Taking in Administrative Procedures and Second-Instance Procedures in Labour Matters. Namely, when calculating the overall time of anterior and posterior proceedings one arrives to a period of time in duration of three to four years for one case, in ideal circumstances nonetheless.

Furthermore, this system of law-stipulated deadlines does not resolve the issue of proceedings' length and does not address the most significant source of the problem. Notably, from the first cases it reconsidered, ECtHR indicated that one of the problem sources is the period of complete inactivity on the part of court instances. In the above-referred case of Arsov[54] (judgment of 2006; application no. 4428/02), under paragraph 43 ECtHR notes:

"...On the other hand, the Court notes that there are substantial delays attributable to the authorities. The Court observes that it took four years for the Kocani Court of First Instance to decide the applicant's claim after the Court of Appeal had referred the case back for re-examination (17 November 1997 - 23 November 2001). Within this period, there was a ***period of total inactivity*** *of two years and eight months..."* (bold letters are author's intervention).

54 (Arsov) This case concerns bank savings and the amount of interest paid on savings.

Therefore, the European Court is not interested in the subject-matter of proceedings in this or any other case, nor in what the Court of Appeal has ordered the Court of First Instance, but is rather concerned with the fact that the legal principle of the law had been violated by the fact that the Court of First Instance has not taken any action for a period of two years and eight months.

Legislative changes enacted in the period 2006/2007 render this period of complete inactivity unsustainable, as according to the legal provisions in effect from the preparatory hearing to the main hearing there may be an inactivity for a period of maximum 50 days, while in terms of main hearings this period might extent to as many as 90 days. However, there are no provisions that would introduce the rule that the main hearing should continue on the following day or should pursue a similar dynamics. (Again), the judge is given discretionary rights to set the date for the next hearing.

Court inactivity is also noted in **special diligence cases**, i.e., in cases where time is of essential importance, such as cases related to labour matters or pension benefits, as remarked in the case of Docevski (judgment of 2007 / application no. 69907/01). Under paragraph 35, ECtHR emphasizes:

"...Moreover, the Court reiterates that special diligence is necessary in pension disputes (see Počuča, cited above, § 46; H.T. v. Germany, no. 38073/97, § 37, 11 October 2001)."

This case is related to setting the amount of pension benefits and included administrative procedure and extraordinary remedy procedure. However, it concerned a procedure where the time dimension is of great importance, thus rendering the procedure' outcome unreasonable if a decision is not taken in due course.

This remark on delays in special diligence cases is also found in the cases of Mihajlovski (paragraph 41), Sali (paragraph 47), Stojanov (paragraph 61), Stojkovik (paragraph 41), Ziberi (paragraph 47), Dimitrieva (paragraph 36), Gjozev (paragraph 48 in the Macedonian translation, paragraph 50 in the English text), Manevski (paragraph 62), Josifov (paragraph 33), Ilievski (paragraph 32), Risteska (paragraph 26), etc. All these cases also include the remark on "organization of the legal system".

By recalling the need to address issues raised by means of procedures initiated in front of ECtHR, the Court criticizes the practice of **declarative adoption of legislative changes**, especially in the case of Parizov[55]

55 (Parizov) It is a matter of civil proceedings for annulment of a care agreement.

(judgment of 2008; application no.14258/03). More specifically, by means of this case ECtHR contested the legal solution[56] from 2006 concerning the legal remedy on decision-taking upon claims for violation of the right to trial within a reasonable time, and establishes that:

> "*44. The Court further* observes that the expression 'the court considers the application within six months' is susceptible to various interpretations (see, mutatis mutandis, Horvat v. Croatia, no. 51585/99, § 43, ECHR 2001-VIII). It remains open to speculation whether the proceedings upon such application should terminate within that time limit. In addition, the 2006 Act defines two courts which may decide upon such remedy: the immediately higher court and the Supreme Court. It does not specify which court would be competent to decide if a case is pending before the Supreme Court, as it is in the present case (see, a contrario, Michalak, § 14, cited above). Even though the Court accepts that statutes cannot be absolutely precise and that the interpretation and application of such provisions depend on practice (see, mutatis mutandis, Kokkinakis v. Greece, judgment of 25 May 1993, Series A no. 260-A, p. 19, § 40), the fact remains that no court decision has been taken although more than twelve months have elapsed after the introduction of the remedy. The absence of any domestic case-law appears to confirm that ambiguity.
>
> *45. Finally, unlike Slovenian, Polish and Italian laws which contain transitional provisions concerning cases pending before the Court (...), the [Macedonian] 2006 Act does not contain a provision which would explicitly bring within the jurisdiction of the national courts all applications pending before the Court irrespective of whether they are still pending at domestic level."* (also see the case of Gjozev, paragraphs 36 and 37)

56 Article 36
(1) The party that believes his/her right to trial within a reasonable time has been violated by the competent court shall be entitled to petition for protection of his/her right to trail within a reasonable time in front of an immediately higher instance court.
(2) The immediately higher instance court shall act upon the petition within a period of six months from its submission and shall decide whether the lower instance court has violated the right to trial within a reasonable time.
(3) Should the higher court confirm the violation of the right to trial within a reasonable time, by means of a decision, it shall award an adequate redress to the claimant.
(4) The adequate redress shall be paid from the Judicial Budget.

Agreeing with ECtHR findings, the authors of this analysis establish that reforms implemented in Macedonia do not make sufficient efforts to comprehensively and analytically approach transformation of the domestic legal system, but rather make attempts to adopt palliative, improvised and superficial solutions, without any intention to address deeply-rooted and more difficult problems. After only two years from its adoption, in 2006 the above-referred Article 36 was amended and now stipulates that the Supreme Court shall be competent to decide on matters concerning postponement of court proceedings. Furthermore, Articles 36-a and 36-b provide further details on these proceedings, i.e., regulate the manner of redress payment. In that, the legislator has conditionally acknowledged that 2006 amendments were insufficiently detailed and failed to provide a quality nomo-technical formulation.

Nevertheless, 2008 amendments also failed to address the sources of problems, but rather make efforts to disguise them by disinformation and half-truths. One such example is the claim made by the national authorities in Strasbourg that continuous referral of cases from the Court of Appeal to the Court of First Instance is hindered by the changes made to the Law on General Administrative Procedure. This is a blatant disinformation, because the said law does not affect civil or criminal proceedings, but exclusively concerns the administrative procedure. Another example of false claims is the replacement of thesis made in the State's response in the case of Gjozev[57] (judgment of 2008; application no. 14260/03). There, Macedonia claimed that (paragraph 40):

"...While the number of remittal orders had not been restricted under the then Act, the new Act required, under certain circumstances, the appeal court to decide a case on the merits instead of remitting it for re-examination... "

Here reference is made to the Law on Litigation Procedure, but it is a matter of half-truth because although it is true that the Court of Appeal can take a decision based on the merits in the case, the same action was possible under the previous Law on Litigation Procedure and its precedents. However, this half-truth attempts to disguise the fact that event the current Law on Litigation Procedures does not limit the number of remittal orders to the Court of First Instance in cases that necessitate establishment of the facts. This type of provision is included only in the most recent Law on Administrative Disputes.[58]

57 (Gjozev) This case concerns unpaid salary and salary contributions.

58 Article 42, paragraph 3 reads: "In cases when the court council has established that the ruling that was appealed is based on essential violation of the provi-

Actually, in its judgment taken in the case of Ograzden[59] (application no. 35630/04, 53442/07 and 42580/09, judgment of 2012), ECtHR establishes that Macedonia does not have an efficient remedy against postponement of lawsuits that could not be subsumed under the most recent amendments to the Law on Courts (2006; 2008 and 2010):

„29. The Court recalls that before the improvements, noted in the Adzi-Spirkoska and Others case, had been made it did not accept the length remedy as effective. Consequently, it sees no reason to depart from its earlier case-law in which it found a violation of Article 13, taken in conjunction with Article 6, due to lack of an effective remedy concerning length cases that pre-dated the Adzi-Spirkoska and Others case (see Krsto Nikolov v [...] the Republic of Macedonia, no. 13904/02, §§ 29-33, 23 October 2008)."

On one side, this means that adoption of laws is not sufficient, especially when the laws in question do not include legal solution for pending proceedings. Also, it is remarked that adoption of new legal solutions does not imply effective remedy until the same is proven in the practice, i.e., in specific court cases. This was emphasized by ECtHR in the case of Adzi-Spirkoska (judgment of November 2011, applications no. 38914/05 and 17879/05), analysing not only the legal changes, but also the practice through its duality: specific decisions taken in individual cases and statistical data on the total number of cases solved or pending according to the new remedy for proceedings' length, and later specified as the exclusive competence of the Supreme Court.

In that, yet another duality exists. On one side of the duality is resolution of cases pursuant to a pre-defined dynamic, while on the other is the existence of a self-regulatory mechanism, i.e., mechanism that resolves violations of this type. This would be proved only in the cases with delayed proceedings and when the domestic courts resolve these cases. In other words, although Macedonia has adopted certain legislative changes, it still has not succeeded too completely organize its legal system.

Direct application of ECtHR case-law in proceedings led in front of courts in the Republic of Macedonia is of essential importance for adequate application of the European Convention on Human Rights.

sions from this law or other laws or is based on erroneously and incompletely established factual situation, and when the ruling has already been annulled, the Higher Administrative Court shall schedule a hearing and shall take a decision based on the merits in the case."

59 (Ograzden) It is a matter of three applicants (one legal entity and two natural persons) that submitted applications for completely different cases: unpaid debt, unapproved disability pension and annulment of job dismissal.

Specifically, the domestic judicial system must demonstrate capacity for adequate application of Article 18, paragraphs 4 and 5 of the Law on Courts, according to which the courts should directly implement the international treaties and apply the final and enforceable judgments taken by ECtHR.[60]

Additional obligation for the courts is given in the provisions related to remittal orders for proceedings[61] in cases in which ECtHR has established violation of the rights guaranteed under the Convention. However, the question is raised about the rights and freedoms protected by international conventions, i.e., international treaties adopted as part of the United Nations or, for example, the International Labour Organization. Obvious is the conclusion that these disputable cases cannot be reduced under the articles contained in the Law on Litigation Procedure or the Law on Criminal Procedure, even the articles contained in the Law on Administrative Disputes that allow remittal of proceedings.

Articles from the Law on Courts concerning the right to trial within a reasonable time go in the same line. Notably, they do not provide space for application of these principles and other international treaties.

From this perspective, one cannot speak about whether certain international decisions are "*adequate for enforcement*" or not, whether certain international provisions are "*directly applicable*" or not, and the like. However, when it comes to ECtHR, i.e., the European Convention on Human Rights, these dilemmas are invalid, except for the question whether the domestic court: a) will apply ECtHR decision, or b) will respect the legal positions upheld by ECtHR. In the law, these are considered two completely different institutes!

Most probably, crucial misunderstanding of these implications originates in the history of our legal system. Throughout the world, or at least in the western societies, two legal systems are dominant: normative and precedential. The former Yugoslav federation opted for

60 (4) In cases where the court believes that the application of the law in the specific case is contrary to the provisions from an international treaty ratified in compliance with the Constitution, it shall apply the provisions from the international treaty provided they are directly applicable.
(5) In the specific cases, the court shall immediately apply the final and enforceable decisions of the European Court of Human Rights, International Crime Tribunal or other courts whose jurisdiction is recognized by the Republic of Macedonia provided that the decision in question is suitable for enforcement.

61 Article 400 of the Law on Litigation Procedure; Article 392 of the Law on Criminal Procedure; Article 43 of the Law on Administrative Disputes.

the continental, i.e., normative legal system, while the Anglo-Saxon, i.e., precedential system was used in addition, notably for the purpose of filling in the legal gaps. Macedonia, as the legal successor of the Socialist Federal Republic of Yugoslavia, decided to continue the application of this approach and therefore Article 98, paragraph 2 of the Constitution stipulates that the courts shall decide on the basis of the Constitution, the laws and the international treaties ratified.[62] Domestic case-law does not provide a conclusion that they are deciding in compliance with the Constitution (as it is somehow implied) and the international treaties ratified (there are no cases decided upon by first-instance or appeal court that refer to an international treaty ratified). It is our belief that the declarations made and the judicial reality in our country are in direct conflict.

The second element of the legal approach, i.e., precedential law is referred to in Article 101 of the Constitution, which stipulates that the Supreme Court shall ensure uniformity in application of laws by the courts. However, cases from court practices show that first and second instance courts do not justify their decisions by referring to other rulings, i.e., rulings taken by other courts with same level of jurisdiction, which would indicate that the courts make due care of uniformed application of the laws. On the contrary, a conclusion is inferred that they consider that uniformed application falls within the jurisdiction of higher instance courts, especially the Supreme Court, and distance themselves from this obligation, although it is an inseparable element of their work.

The problem appears with the fact that the ECHR is an international treaty ratified by the Republic of Macedonia! This means that pursuant to Article 98, paragraph 2 of the Constitution, the courts must directly apply this Convention in their day-to-day work. If they comply with this provision, it would mean that they are pursuing a combined legal approach, i.e., normative and precedential law. Notably, Article 46 of the ECHR includes an imperative obligation for Macedonia, in the capacity of a Contracting State to the Convention, to comply with the (final) judgments taken by the European Court in cases is which Macedonia appears as a party in the dispute. The Court does not assess only normative aspects in the case, but also expects Macedonia, by the letter of the law, to respect and apply them.

Nevertheless, for a long period first and second instance courts did not feel obliged to do so, i.e., they did not demonstrate understanding

62 Republic of Macedonia ratifies the international treaties by adopting a ratification law.

of the fact that the laws are not the single source of law in their work and that court decisions, including those taken by the European Court, are also a source of law in their work, and therefore the Supreme Court was forced to adopt the Opinion from 29.6.2007 whereby it instructed the lower instance courts on their obligation to apply ECtHR judgments and that in their work they are obliged to apply the legal principles of fair trial and "equality of arms" (equal position of both parties in a dispute). However, even this Opinion, which does not concern only ECtHR, does not refer to the third segment included under Article 98, paragraph 2 of the Constitution, i.e., ratified international treaties as source of law in our legal system.

Anyhow, key difference in the manner in which Macedonian judiciary treats international courts at the moment is identified in the fines (monetary redress) awarded on the detriment of Macedonia! This is done only by the Council of Europe, i.e., ECtHR, and hence the conclusion is inferred that only a financial threat *per se* can be a driving force for changing and adjusting the legal system in Macedonia in line with the international legal trends and standards. It seems that Macedonia is far from developing own momentum for the purpose of guaranteeing full protection of rights enjoyed by all citizens.

B) Essential problems. – After the initial round of judgments, in addition to untimely rulings taken by domestic courts, ECtHR was addressed with cases whose time-dimension brought to the surface other essential problems. For that purpose, ECtHR started to use a new, repetitive remark: **serious deficiency in the legal system**. In the case of Ziberi[63] (judgment of 2007; application no. 27866/02) ECtHR says:

> *"46. The Court considers that the protracted length of the proceedings was due to the repeated re-examination of the case. During the time which falls within its competence ratione temporis, the case was reconsidered on five occasions. The domestic courts thus cannot be said to have been inactive. However, although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see Pavlyulynets v Ucraine, no. 70767/01, paragraph 56, 6 September 2005; Wierciszewska v Poland, no. 41431/98, paragraph 46, 25 November 2003)."*

63 (Ziberi) This case concerns injury at work, unsuccessful claim for disability pension and terminated employment status.

The remark on "serious deficiency in the legal system" is also present in the cases of Gjozev (paragraph 51), Manevski (paragraph 55), Velova (paragraph 33), Blaze Ilievski (paragraph 23), Bocvarska (paragraph 71), Kamberi (paragraph 31), etc.

In addition to the continuous re-delegation, ECtHR identified and remarked another, more distressing phenomenon. Notably, once a case is closed, both Macedonian authorities and Macedonian courts demonstrate utter indifference in regard to legal effects created by the final judgment. Despite distinguishing between narrowly-defined court proceedings from anterior procedure that were addressed earlier in this analysis, the courts also distinguish the posterior (enforcement) procedure which implies implementation of court rulings. Thus, ECtHR introduced yet another, frequently repeated, remark that first appeared in the case of Jankulovski[64] (judgment of 2008; application no. 6906/03) as follows:

> *"33. The Court recalls that **the right to a court would be illusory if** a Contracting State's domestic legal system **allowed a final, binding judicial decision to remain inoperative** to the detriment of the one party. It would be inconceivable that Article, paragraph 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively to access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see Immobiliare Saffi v. Italy (GC), no. 22774/93, paragraph 63, ECHR, 1999-V). A delay in the execution of a judgment may, however, be justified in particular circumstances, but this delay may not be such as to impair the essence of the right protected under Article 6, paragraph 1 (ibid, paragraph 47)."* (bold letters are author's intervention).

The remark on illusory right to court means that, in broader terms, the legal system is also illusory. As early as the Roman law, this situation is called *ius nudum* or "mere right" because a given right is not supported by a legal implementation mechanism. Accordingly, it seems that ECtHR speaks of an illusory right as applied by Macedonian courts and authorities,

64 (Jankulovski) This case concerns debt and private property (automobile). Although it had been stated that the debt needs to be repaid, the execution procedure was unsuccessful.

and this remark can be found in the cases of Krsto Nikolov (paragraph 21), Pecevi (paragraph 29), Savov (paragraph 45), Bocvarska (paragraph 67), Kamilova (paragraph 20), Petkoski (paragraph 40) etc., as well as in the case of Nesevski[65] (judgment of 2008; application no. 14438/03) under paragraph 21, where ECtHR uses the following formulation:

"... Execution of a judgment given by any court must therefore be regarded as an integral part of the 'trial for the purpose of Article 6'..."

This formulation should and must be understood as an approach whereby if a court decision is not implemented, the judging court has not completed its work. As a rule, this is not integrated in our laws or any other legal acts. It is not only a matter of introducing certain "improvements" and referring to them as "reforms", but the need to introduce the principle of integrating posterior proceedings in the overall procedure, which is absent from the legislation in effect.

Different types of implications from failure to enforce court decisions are best explained in the above-referred case of Nesevski, where ECtHR faced an ultimate illogical reasoning, as described in paragraph 33:

"... in the present case, the applicant had already instituted civil proceedings in respect of the appointment of Ms. V.M. to the vacant post, and had been successful. The Government has not explained how or why a further action could have constituted an effective remedy against the non-enforcement of the Supreme Court's judgment of 28 February 2001, as required by Article 13, rather than being a mere repetition of the earlier proceedings, which gave rise to the Supreme Court's decision..."

Most certainly, this problem can also be reconsidered in terms of the factual position of the courts and of the Supreme Court versus the Government and its line ministries. Irrespectively of the fact that it could never be a justification, one must have in mind that, conditionally, the executive branch of government is "more powerful" than the courts. Therefore, at any moment the courts are faced with their powerlessness when they realize their decisions are not enforced. In ECtHR's opinion, this is inconceivable and incomprehensible, and therefore in the case of Dumanovski (judgment of 2005; application no. 13898/02; employment contributions), it notes (paragraph 47):

"...The Court is also ***struck by the failure*** *of the Ministry to decide upon the applicant's complaint despite being instructed to do so by the*

65 (Nesevski) It is a matter of selecting a less successful candidate for a job position at a school in Skopje.

> *Supreme Court's judgment of 28 April 1999. The Ministry also failed to decide upon the applicant's appeal of 2 December 1999 and his second referral of 7 February 2000. It dismissed the appeal on or about on 15 August 2000, only after the applicant raised the issue of its inactivity before the Supreme Court..."* (bold letters are author's intervention).

Having in mind the cases pending in front of ECtHR, one can conclude that they are not isolated cases and that even the courts expect the citizen who has motioned the proceedings to lead them to a successful outcome – to lodge an appeal or other remedy for the purpose of having the enforceable court decision implemented. In practice, this creates a paradoxical situation of the courts requesting the citizen to appeal, even when he/she is satisfied! Unfortunately, this only confirms that the rule "execution is an integral part of the court decision" or the rule "unity of all proceedings" (which is on the other spectrum of the remark about the illusory right) is not integrated in our case-law or legal theory.

Both remarks ("serious deficiency in the legal system" and "illusory right") are categorized as essential problems because they might imply that: a) cases are delayed due to the inability to effectively solve them once the judgment is taken; and b) lack of responsive mechanism at the courts, i.e., kind of self-isolation on the part of the courts. Namely, it is quite possible that the courts are aware that if they take legally justified decisions, the same would not be enforced. On the account of this frustration, most often, they decide to take (illegal) decision in favour of the State. In the very few cases where a legally justified decision was taken, the courts distanced themselves from administrative and other types of proceedings that have led to the motioning of the lawsuit in question or they demonstrated "disinterest" in executing their own judgment or its legal effects. In that, the domestic courts enable space for the judiciary function of legal protection of the citizen to be marginalized and even eradicated, especially in a situation when the citizen contests a (erroneous) decision taken by a state institution. If the judiciary's role as the corrector or controller of the authorities is non-functional, the citizen – as an individual – has no theoretical chances to confront the authorities comprised of individuals, but organized as powerful machinery.

As regards the insufficient independence and impartiality of the judiciary, as well as the absence of rule of law, due notice should be made of ECtHR findings presented in the case of Petkoski[66] (judgment of 2009; application no. 27736/03). Namely, in this case the authorities

66 (Petkoski) It is a matter of transformation of an agricultural cooperation into state-owned enterprise.

(paragraph 14), and later the courts, decided to terminate court protection in a specific type of case (former state ownership) with retroactive effect nonetheless (paragraph 18). The decision on retroactive effect for a period of seven years was confirmed even by the Supreme Court (paragraph 15). In ECtHR's opinion, which we fully agree with, the paramount of legal nonsense (**absurd**) is the declaration of **non-jurisdiction on the part of state authorities**:

> *"...Furthermore, neither the courts nor the Government gave any suggestion that the applicants could have vindicated the rights they were trying to protect in any other way, for example by identifying which body would be competent to decide the case...."* (paragraph 45 in the original judgment/ page 9, paragraph 18 in the Macedonian translation).

In other words, Macedonian authorities violated Article 6 of the ECHR by failing to respect the traditional legal principle of court jurisdiction that is integrated in our law for more than five decades and that was in effect even at the time when relevant proceedings were taken in this case (i.e., pursuant to the 1995 Law on Courts) and in the current Law on Courts. Notably, first aspect of this principle is the fact that the Court refers to court's non-jurisdiction only when by means of law the said jurisdiction is entrusted to another state body. The second aspect implies that the Court cannot reject any claim for exercise of certain right with the explanation that there is a legal gap and is thus obliged to decide the case, and if it is unable to decide in any other manner, the court should refer to the general principles of the law. This means that irrespective of the legislative changes made in relation to state ownership, Macedonian courts should not have declare themselves incompetent and must have found a way to make a relevant decision in the case.

Another form of non-jurisdiction is when the courts allegedly uphold conflicting views and positions and are thus unable to harmonize them, as was noted in the case of Spasovski[67] (judgment of 2010; application no. 45150/05). Under paragraphs 31-33, ECtHR states:

> *"... The Court notes that the role reason relied on by the domestic courts for dismissing the applicant's action was that he had not directed his claim against the proper defendant. While the first-instance court opined that this defendant was the State, the Court of Appeal held that it was the municipality. The courts thus twice disposed of the case*

67 (Spasovski) The case concerns injuries inflicted by an explosion from a bomb placed in a house in Aracinovo.

on purely procedural grounds, without touching upon the substance of the dispute (...) the Court considers that, as a result of the conflicting positions taken by the domestic courts, the applicant was wholly prevented from having the merits of his claim determined by a court. (...) There has accordingly been a violation of Article 6, paragraph 1 of the Convention...."

This case clearly shows the judiciary's conscious decision not to engage in resolving citizens' rights, unwilling to oppose the powerful machinery of executive authorities. At first glance, it seems that the key dimension in this case is the timeline of proceedings; however, the key problem is the censorship and self-censorship of judges when they need to face executive authorities in a given case.

In conclusion, starting from the fact that the right to court stipulated under Article 6 does not imply only the possibility for motioning court proceedings, but an arrival to a final court decision, and ultimately enforcement of the court decision, ECtHR believes that in Macedonia these aspects of the said right have been replaced with an illusory and absurd legal system with serious deficiencies!

Relevant authorities in Macedonia must have been aware of these negative tendencies in the judiciary, more so knowing that they have been duly noted in a series of judgments taken by ECtHR. Thus, justified is the need to examine why ECtHR, not only in the case of Petkoski, perceives **the authorities as an important factor** that has contributed to current state-of-affairs in the judiciary. In the case of Nasteska[68] (judgment of 2010; application no. 23152/05), ECtHR does not only perceive and strongly criticize the "normalcy" established in the case-law in Macedonia – close relations between the public prosecutor and the judges – but it also offers a detailed elaboration of this phenomenon in paragraph 28:

"The applicant was, however, summoned to attend only one session, while the public prosecutor attended all four sessions held by the Court of Appeal. Such was the case with the last session held at the final stage of the proceedings when the Court of Appeal upheld the applicant's conviction. On that occasion, the public prosecutor referred her to her own written submissions of 24 September 2004 and submitted a final oral statements requesting that the applicant's appeal be dismissed. The applicant, not having been informed of the session, could have replied to that position, even though it did not involve, according the Government, any new evidence. In this connection, the Court observes

68 (Nasteska) This case concerns accusations related to abuse of official duty and position in adopting decisions on approving social welfare benefits.

that the principle of equality of arms does not depend on further, quantifiable unfairness flowing from a procedural inequality. (...) The Court considers that even if the public prosecutor had not been permitted to make any comments, her presence at the Court of Appeal's private sitting afforded her to, if only to outward appearances, an additional opportunity to bolster her opinion in private, without fear of contradiction by the applicant..." [underlined words are the author's correction of the Macedonian translation].

On this account, ECtHR established that the mere presence of the public prosecutor constitutes a violation of Article 6, especially in regard to "equality of arms" awarded to the parties in the court proceedings. It seems that not only the public prosecutor, but the Court of Appeal as well, did not perceive the violation of the right to a fair trial or distanced themselves from it, which is in conflict with the decisive legal norms established in this regard, but also in conflict with previous judgments taken by ECtHR.

As early as the judgment taken in the case of Grozdanoski[69] (judgment of 2007; application no. 21510/03) ECtHR emphasized the unequal position of the public prosecutor in the proceedings led in front of the Supreme Court! Namely, not only did the defendant (saving house "Mak BS") motion for a review, but the public prosecutor as well made petitions in the same direction, while the Supreme Court, failing to notify the applicant, decided against his rights (see paragraph 38).

In the case of Fetaovski[70] (judgment of 2008; application no. 10649/03) ECtHR, as is the common practice, emphasized that it does not engage in reconsidering the manner in which Macedonian courts interpret the national legislation (see paragraph 37), however, it established a violation of Article 6, i.e., the applicant's right to court had been violated. In this case, Macedonian courts were reluctant to reconsider the applicant's claim, while his last appeal was assessed as untimely and thus rejected as inadmissible. However, visible was the fact that the court officer has stamped one date on the submission, but the register of submissions showed a completely different date, much later. In that context, ECtHR decided to bring this weakness to the attention of our courts by reconsidering the facts in the case:

"...On 23 January 2002, the applicant brought criminal charges for abuse of office against the court's administrative officer who had allegedly put different receipt date on the copies of the appeal and

69 (Grozdanovski) It is a matter of calculation of interest on a mortgage loan.
70 (Fetaovski) This case concerns sheep slaughtering due to brucellosis.

entered the wrong date in the register. On 25 February 2003 the public prosecutor rejected the applicant's criminal complaint as the offence complained of was not prosecutable ex officio. On 11 April 2003 the first-instance court refused a request by the applicant to open an investigation in respect of that officer. That decision was upheld on 11 June 2003 by the Skopje Court of Appeal..." (paragraphs 25 to 27).

The question is raised whether the second-instance court would have demonstrated "solidarity" with the first-instance court if the public prosecutor did not declare that abuse of office is not prosecutable ex officio, although this offence is prosecutable ex officio. Is this an example of "carrot and stick" strategy applied by the executive branch of government? If the courts had already decided not to admit the case due to legal technicality, the public prosecutor, as an instrument of the government, is obviously willing to compromise its office in order to return the favour.

The existence of *quid pro quo* principle is visible in the case of "Pakom Slobodan" DOOEL[71] (judgment of 2010; application no. 33262/03), as it implied the courts' return of favour to the public prosecutor. The process that was inclined to end in favour of the applicant at the level of Supreme Court suddenly changed its course when the public prosecutor appeared as the applicant's opposing party. ECtHR "succeeded to resolve case" by making a reference to the facts in the case as part of its opinion, which was also observed in the case of Fetaovski. The section of facts in the case from ECtHR judgment reads:

"9. On 16 May 2000 the public prosecutor lodged a legality review request with the Supreme Court of the Republic of Macedonia against the decision of 16 March 2000 arguing that inter alia the enforcement order could not be executed since the validity of the contract had meanwhile expired. On 29 September 2000 the first-instance court postponed, on the public prosecutor's request, the enforcement proceedings pending the outcome of the legality review proceedings..."

Although the Supreme Court initially rejected the legality review request, the first-instance court started to delay its proceedings, including two changes of the judge deciding the case. Finally, in 2008, the case's prospects were reversed and the applicant lost the lawsuit.

ECtHR did not oversee these matters and in the section on the merits in the case (paragraph 27) clearly alluded to the moment when the situation turned on the detriment of the applicant:

71 (PAKOM Slobodan) The case concerns renting of business premises.

*"...In this connection, the Court observes that the first-instance court advised the debtor to challenge the admissibility of the enforcement only on 22 November 2005. It sees no reason why did it take that long for the first-instance court to do so given that that issue had been first raised in the debtor's objection of 16 February 1999 (see paragraph 15 above). Moreover, the proceedings lay dormant for two years and five months pending the outcome of the legality review proceedings (**see paragraph 9 above**)..."*

Such distortions of the legal system by means of courts' practices should have been corrected by the Supreme Court of the Republic of Macedonia. However, in this case particular concerns are raised in regard to the role played by the Supreme Court in distorting the legal practice in Macedonia.

This might be the reason why in the case of Bocvarska[72] (judgment of 2009; application no. 27865/02) ECtHR abandoned its practice of alluding to the facts, but openly remarked the relations between the public prosecutor and the Supreme Court. Hence, in paragraphs 82 and 83, ECtHR states:

*"...In the present case, the Court notes that the State's interference with the applicant's property rights was made by the Supreme Court's decision of 30 May 2002. This decision was given upon the public prosecutor's legality review request under the then applicable rules of civil proceedings (see paragraphs 52-58 above). The interference was made pursuant to a remedy requested by a State organ, which was not a party to the proceedings [...] In addition, the public prosecutor had full discretion in deciding whether to lodge the legality review request with the Supreme Court [...] For these reasons, the Court considers [*is of the standing*] that the legal effects of the legality review proceedings [....] were comparable to those of the supervisory review system existing in some Contracting States, since the Supreme Court set at naught an entire judicial process which had ended in a judicial decision that was "irreversible" and thus res judicata [...] The Court finds that the quashing of the decision of 6 September 2001 **was not compatible with the rule of law**, which is inherent in all Articles of the Convention..."*

Such, one might say, serious qualification should alert all levels of jurisdiction, including the Supreme Court and the executive authorities. ECtHR indicated that the key legal postulate of democracy in our state

72 (Bocvarska) It is a matter of commercial dispute involving debtor and trustee relations.

had been violated. Notably, for ECtHR to afford itself to utter such remarks should mean a paramount duty for all national level stakeholders to analyse the reasons and take the measures necessary to correct the damage caused.

However instead of adequate reaction to such remarks on the part of the State, in the period that followed ECtHR encountered more cases indicating various problems related to the Supreme Court. Namely, in the case of Bajaldziev[73] (2011, final judgment of 2012; application no. 4650/06) ECtHR observed a phenomenon, which it describes as follows:

"34. In the instant case, the applicant's concerns regarding the Supreme Court's impartiality stemmed from the fact that its bench had included judge V.K., who had previously sat in this case, as president of the bench of the Court of Appeal that had adopted the decisions of 19 June 1997 and 14 March 2001."

Authorities in our country found it sufficient that the said judge was not involved in Supreme Court's decision-taking at a later stage, but unfortunately the decisions of the Supreme Court taken later in the process implied recalling the previous decisions taken by this court, where the said judge was involved. Therefore, ECtHR has not only found a violation of Article 6, but used the above cited formulation, most probably due of the involvement of the Supreme Court, i.e., the national court competent to react to such violations:

"53. Furthermore, where the Court finds that an applicant's case has been decided by a tribunal which is not independent and impartial within the meaning of Article 6, paragraph 1 of the Convention, it considers that, in principle, the most appropriate form of relief would be to ensure that the applicant, if he so requests, is granted, under the section 400 of the Civil Proceedings Act of 2005 (see paragraph 23 above) a retrial by an independent and impartial tribunal (see San Leonard Band Club [v. Malta], cited above, § 70)."

Criticism, which goes as far as full negation of impartiality of the current judiciary system in Macedonian, is even more severe in the case of Trampevski (judgment of 2012; application no. 4570/07) where ECtHR uses a straightforward vocabulary and raises the question whether a criminal act did actually occur! In paragraph 37 of its judgment, ECtHR:

"...notes that the applicant's appeals were based, inter alia, on sections 355 § 2 and 413 § 1 (3) of the Act (see paragraphs 28 and 31 above), according to which an alleged violation of defence rights was a valid

73 (Bajaldziev) This case concerns declaring a gift agreement null and void.

ground for quashing a defective judgment. The appellate courts were accordingly well placed to consider whether the proceedings, in view of the applicant's complaint, were fair..."

In reality, not only did the higher instance courts failed to do so, but they also confirmed the "defective" judgment. Hence, inevitable is the conclusion that it is not a matter of flawed legal solutions, but rather the manner in which they are implemented in all stages of court proceedings. In this specific case, a taxi driver was transporting two persons to the vicinity of the state border with Greece (village Bukovo), but he did not exit the territory of Macedonia or crossed the state border. However, he was convicted of "smuggling migrants across the border". Legal deficiencies start with the actions taken by the police, then the investigative judge and the public prosecutor, and they are completed with the actions taken by the Court of Appeal and the Supreme Court which, although could have made due consideration of, decided to overlook these deficiencies.

If this was possible, in one way or another, at lower court instances, ECtHR raised the question on how could the courts allow that. At the same case, as is the practice established, ECtHR emphasized that the reconsideration of evidence is within the jurisdiction of national courts, but it considered necessary to indicate one of the most obvious weaknesses in our system: **courts' discretionary admission of evidence.** Thus, in paragraph 47 of its judgment, ECtHR states:

"...their evidence was circumstantial in nature and, at best, could only provide indirect support for the applicant's guilt. Ms S.S. and Mr M.T. produced evidence corroborating some of the details of the applicant's testimony (see paragraphs 17 and 18 above, but the trial court ***disregarded it as unreliable****..."* [bold letters are author's intervention].

In conjunction with ECtHR's remark given in paragraph 49, which reads:

"...The applicant was unable to test the truthfulness and reliability of the evidence produced by the migrants by means of cross-examination despite the fact that it was the only direct evidence against him (...). Consequently, he was convicted on the basis of evidence in respect of which his defence rights were appreciably restricted...."

The conclusion is inferred that Macedonian courts convicted a person on the basis of, at best, circumstantial evidence, without having tested their truthfulness and reliability, and in the absence of any elements of the criminal offence for which he was convicted.

In this regard, it is clear that the principle of rule of law is violated in our country and that the judicial system does not correct the mistakes of executive authorities, but on the contrary, further supports them.

In parallel with the exceptionally serious indications on the violation of the principle of rule of law, these actions show another essential weakness: instrumentalized use of the judiciary. Moreover, there are no rules or rulebooks that would govern the manner in which evidence is collected and admitted, which represent a *modus vivendi* for any judicial system. In the absence of such institute, the process on assessing evidence, obviously, becomes discretionary and exclusively depends on the will of judicial authorities or even worse, on the will of the executive branch of government. Therefore, even the absence of judges' responsible relation towards their competence to "consider evidence reliable" is not given due explanation in many cases. As simple as that, the trail court decided as given in its ruling. On the contrary, ECtHR, by means of comprehensive and detailed elaboration, decided to "consider the rulings of the Macedonian courts unreliable" and thus established violation of Article 6 paragraph 1 and of Article 6, paragraph 3 (d).

ECtHR's criticism related to admission of evidence does not come unannounced. On the contrary, on several occasions in the past, ECtHR called the domestic courts to develop the said rules or rulebooks. In the case of Gorgievski[74] (judgment of 2009; application no. 18002/02; judgment is not translated in Macedonian language) where it established no violation of Article 6, i.e., in a positively formulated decision, ECtHR clearly states that:

> *"...While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is therefor primarily a matter for regulation under national law."*

In simple terms, this comment indicated that, at best, arbitrary assessment of evidence is "possible", but there is an urgent need for establishment of national "rules on evidence admission". The same is true for summoning and cross-examination of witnesses (paragraphs 46 and 47). An identical remark is also given in the case of Ziberi (2007), while in the case of Nikolov[75] (judgment of 2007; application no. 41195/02) ECtHR uses a more direct vocabulary:

74 (Gorgievski) It is a matter of alleged bribe offered to a sanitary inspector.

75 (Nikolov) This case concerns non-payment of insurance premium for live-stock.

"28. The applicant further complained under Article 6 of the Convention that the courts had decided his case arbitrarily; that they had erred in fact and law; that their decisions had not been reasoned; and that he had not been allowed to cross-examine the court-appointed expert. He also complained under Article 1 of Protocol No. 1 that he had been deprived of possessions.

29. Having regard to its findings of a violation of the applicant's right to a hearing by an impartial tribunal, the Court considers that it is not necessary to examine the other complaints under Article 6 ..."

In other words, the Macedonian authorities were given sufficient signals and a clear message that the national courts are not impartial and they had the possibility to react. Given that they have turned the deaf ear, ECtHR had no other option but to openly criticize them, but it seems that even the criticism did not suffice for certain action to be taken, at least on elementary level, such as, for example, adoption of Rulebook on the Evidentiary Procedure, which is equal to a notoriety in the practices of international judicial instances, but also in the long-standing legal and judicial systems. On the contrary, our civil legislation implies a practically inviolable freedom of judges' conviction.[76]

Is it possible for our judges to apply the said inviolable arbitrary deliberation also in the case of ECtHR judgments? Indicative is the change of formulations used by ECtHR once it realized that there is a "misunderstanding". This is best seen in the case of Mitrevski[77] (judgment of 2007; application no. 33046/02) where ECtHR established violation of the right to fair trial. Thus, in paragraph 41 of its judgment, ECtHR notes:

"...Having regard to its conclusion that there was an infringement of the applicant's right to a fair hearing for the reasons stated above, the Court does not consider it necessary now to rule on the applicant's compliant based on Article 1 of Protocol No. 1..."

Is it possible for our courts to have inferred a conclusion that Article 6 and the right to fair trial were violated, but there was no violation of Article 1 of Protocol No.1 (right to possession)? Obviously, ECtHR was alarmed by such interpretation, and three years later, in the above-referred case of Spasovski, decided to use a more "open" formulation in paragraph 41:

76 Article 8 of the Law on Litigation Procedure reads: "It is the court, on the basis of conscious and diligent assessment of individual evidence and of all evidence together, as well as on the basis of the overall proceedings, to determine which facts will be admitted as proven."

77 (Mitrevski) This case concerns the right to immovable property.

"...However, the Court is of the opinion that the most appropriate form of redress in cases where it finds that, in breach of Article 6, paragraph 1 of the Convention, an applicant has not had access to a tribunal, would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial..."

The essence behind this, as well previously indicated, weaknesses in our judicial system, is the fact that once the court violated the form, the ruling it had taken becomes some sort of speculation or conjecture. Sometimes, it might take the right decision, but in majority of cases, the decision taken is unjust.

In most case, the opposite action, i.e., adherence to well-defined forms that have been upgraded and improved on the basis of generations and generations of experiences, would lead to fair and just decisions, and would fail in only a small number of cases. In conditions when the failure occurs very rarely, mechanisms of self-healing can, by rule, easily become functional, i.e., the domestic courts will acknowledge the violation made and would not ignore it or further support it, but would actually resolve it. Consequently, there would be a very small number of cases motioned in Strasbourg.

3.2. DEADLINES AND EXHAUSTION OF ALL REMEDIES

Deadlines for presenting ECtHR with a complaint and exhaustion of all remedies available on national level are stipulated as formal requirements for processing of cases in front of ECtHR. On several occasions, as part of its response to the application motioned, the State refers to non-fulfilment of these requirements in the cases processed by ECtHR.

On several occasions, the Court[78] provided explanation that should give precise description of this part of the procedure. One of the most explicit general recommendations issued by ECtHR is given in the introductory part of the Court's assessment in the case of El Masri[79], which reads:

78 *El Masri v the Republic of Macedonia*; *Mitreski v the Republic of Macedonia*. This application concerns violation of Articles 3, 5, 8 and 13 of the ECHR in relation to actions taken by officers of the Republic of Macedonia who, according to the applicant's allegations, have detained him, kept him incommunicado, interrogated and tortured him, and then handed him over to CIA agents on the Skopje airport, where he was transported with a special CIA airplane to a secret detention facility in Afghanistan operated by CIA, where he was tortured for more than four months.

79 *El Masri v the Republic of Macedonia* (application no. 39630/09, judgment of 13 December 2012)

"The Court reiterates that the Convention is an instrument for the protection of human rights and that it is of crucial importance that it is interpreted and applied in a manner that renders these rights practical and effective, not theoretical and illusory."

According to the Court, deadlines stipulated for motioning a complaint in front of it must be reconsidered through the prism of the possibility for exercising the rights:[80]

"As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of such acts or their effect on or prejudice to the applicant (see Dennis and Others v. The United Kingdom (dec.), no. 76573/01, 2 July 2002).

One of the recommendations given by ECtHR concerns the issue of exhaustion of all domestic remedies prior to lodging the complaint in front of ECtHR. In several cases[81] ECtHR establishes that:

"...in the context of machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism..."

In this regard, criticism is due for the idea on introducing a constitutional lawsuit[82] (which must be lodged by all persons who seek protection of their human rights), which should allegedly reduce the number of cases processed in Strasbourg. This idea (which can only allegedly bring positive effects) is actually in collision with recommendations given in ECtHR judgments. For example, in its judgment taken in the case of Lazoroski v. the Republic of Macedonia, ECtHR stresses that the rule on exhaustion of domestic remedies:

80 *Mitreski v the Republic of Macedonia* (application no. 11621/09, judgment of 2010). This application concerns Article 5 and Article 6 of the ECHR. The applicant complained about the court procedure for issuing a detention order. *El Masri v the Republic of Macedonia* (application no. 39630/09, judgment of 13 December 2012)

81 For example: *Trampevski v the Republic of Macedonia* (application no. 4570/07, judgment of 2012). This application concerns Article 6 of the ECHR. The applicant complained about the inability to cross-examine the witnesses whose statements were given in the investigation procedure and served as basis for his conviction.

82 http://www.utrinski.com.mk/default.asp?ItemID=A42A09C196A9094C856878A8923A2A85

"... is neither absolute nor capable of being applied automatically; for the purpose of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case.[83]

When determining whether all domestic remedies have been exhausted, ECtHR makes due consideration of:

- existence of formal remedies in the State's judicial system;
- general context in which domestic remedies are pursued;
- individual circumstances of the applicant;
- whether, under the specific circumstance of the case, the applicant has done everything that could be reasonably expected from him/her in order to use all domestic remedies.

According to ECtHR:

"... an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available, but probably no more likely to be successful."[84]

This is an important remark that could be applied in the cases when the Public Prosecution has not accepted *ex officio* prosecution although it was obliged to do so, while the applicant has no other legitimate grounds to continue the prosecution by means of a private lawsuit. This means that prior to motioning a procedure in front of ECtHR, there is no need to absolutely exhaust all remedies available in the State, but only those that are available to the complaining party, without engaging in non-productive court proceedings for which it is known in advance that they would not produce positive outcome for the applicant. This means that if decisions of the court/public prosecution clearly indicate the State's intention not to take any actions in the specific case, the concerned party cannot be required to expose itself to unnecessary costs in order to exhaust all remedies that are only formally at its disposal.

3.3. RESPONSIBILITY FOR ACTIONS TAKEN BY AGENTS OF THE STATE

Continuously repeated recommendations in ECtHR judgments are related to Article 3 of the ECHR: prohibition of torture.[85]

83 *Lazoroski v the Republic of Macedonia* (application no. 4922/04, judgment of 2009)

84 Ibid

85 Article 3 of the ECHR: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

In a very explicit manner, these statements are reiterated in the case of El Masri, where the Court emphasizes that:

> *"If the actions of the State agents involved have been illegal and arbitrary, it is for the prosecuting authorities of the respondent State to identify and punish the perpetrators."*[86]

Given the fact that the act of torture is related to actions taken by agents of the State, police powers for use of force and firearms and activities at closed facilities,[87] the State must develop an effective system for prevention of torture and identification and prosecution of perpetrators. This implies establishment of rules, criteria and procedures that would ensure prevention of torture and unequivocal engagement on the part of the State in identification and sanctioning of torture.

In this regard, indicative is ECtHR's position expressed in the case of El Masri[88] and related to statements given by high government officials. Thus, according to the Court:

> *"In principle, the Court will treat with caution statements given by Government ministers or other high officials, since they would tend to be in favour of the Government that they represent or represented. However, it also considers that statements from high-ranking officials, even former ministers and officials, who have played a central role in the dispute in question, are of particular evidentiary value when they acknowledge facts or conduct that place the authorities in an unfavourable light."*

This position upheld by the Court can and should be used in the domestic court practices.

Recommendations given as part of ECtHR judgments and related to this issue are multifaceted and require thorough reforms that address the legislation, institutions and practices established by different state bodies.

3.3.1. Efficient investigation in cases of reasonable suspicion for violation of Article 3 of the ECHR

When ECtHR acts in cases related to violation of Article 3 of the ECHR, it considers both the substantial violation and the procedural

86 *El Masri v. the Republic of Macedonia* (application no. 39630/09; judgment of 13 December 2012)

87 For example: prisons, psychiatric hospitals, detention centres, police stations and asylum centres...

88 *El Masri v. the Republic of Macedonia* (application no. 39630/09; judgment of 13 December 2012)

aspects related to absence of adequate investigation that could have, with a certain level of certainty, determine whether the violation occurred or not.

On several occasions, ECtHR judgments emphasize that:

"The Court reiterates that where an individual raises an arguable claim that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible".[89]

In that, the Court does not determine whether torture exists in the specific case. Moreover, the Court does not even engage in such analysis, and often determines that there are no sufficient indications for existence of torture, but it addresses the absence of proper investigation. Notably, the government is obliged to establish institutions and develop procedures that would ensure that every case in which the applicant has complained of being tortured is investigated in the best and most efficient manner possible.

Furthermore, the Court determines that:

"The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to establish the facts, hold accountable those at fault and provide appropriate redress to the victim." & "They should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard".[90]

89 For example: *Gjorgi Gjorgiev v. the Republic of Macedonia* (application no. 26984/05, judgment of 2012). This application concerns Article 3 of the ECHR. The applicant complained of injury inflicted while serving his prison sentence and during performance of work activities at the prison. *Jasar v. the Republic of Macedonia* (application no. 69908/01, judgment of 2007). This application concerns Article 3 of the ECHR. The applicant complained of police brutality, absence of efficient investigation into his s claims and absence of efficient remedy against the inactivity of the public prosecutor. *Stoimenov v. the Republic of Macedonia* (application no. 17995/02, judgment of 2007). This application concerns Article 6 of the ECHR. The applicant complained that he was not guaranteed equality of arms in court proceedings. *El Masri v. the Republic of Macedonia* (application no. 39630/09; judgment of 13 December 2012).

90 For example: *Gorgi Gorgiev v. the Republic of Macedonia* (application no. 26984/05, judgment of 2012) and: *Jasar v. the Republic of Macedonia* (application no. 69908/01, judgment of 2007), *Stoimenov v. the Republic of Macedonia*

According to ECtHR, the State must not rely on the fact whether the claimant requested an investigation or nor, but must undertake investigative actions *ex officio*: "*the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the individual either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures*".[91]

According to ECtHR:

> *"An investigation that would lead to establishing criminal liability under section 294 of the Criminal Code (see paragraph 44 above) for any omissions imputable to State officials leading up to the incident, would have had a deterrent effect on the commission of similar offences in future".* [92]

This was among first recommendations ECtHR addressed Macedonia with. According to ECtHR, investigation into serious allegations of ill-treatment must be thorough. This means that the competent authorities must take all reasonable steps at their disposal to secure the evidence related to the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation that undermines its ability to establish the cause of injuries or the identity of persons responsible would risk falling foul of this standard.[93]

ECtHR holds that when such application raises at least a reasonable suspicion that the applicant's injuries could have been caused by the police, competent authorities must carry out an investigation pursuant

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(application no. 17995/02, judgment of 2007) and *El Masri v. the Republic of Macedonia* (application no. 39630/09, judgment of 13 December 2012).

91 *Gorgi Gorgiev v. the Republic of Macedonia* (application no. 26984/05, judgment of 2012)

92 *Gorgi Gorgiev v. the Republic of Macedonia* (application no. 26984/05, judgment of 2012)

93 *Dzeladinov and Others v. the Republic of Macedonia* (application no. 13252/02, judgment of 2008). This application concerns Articles 3 and 13 of the ECHR. The applicant complained of ill-treatment by the police and inactivity of the Public Prosecution in regard to carrying out an investigation into the allegations. *Sulejmanov v. the Republic of Macedonia* (application no. 69875/01, judgment of 2008). This application concerns Article 3 of the ECHR. The applicant complained of ill-treatment by the police and prosecuting authorities' refusal to investigate his case. *Trajkoski v. the Republic of Macedonia* (application no. 13191/02, judgment of 2008). This application concerns Articles 3, 6 and 13 of the ECHR. The applicant complained of ill-treatment by the police in an attempt to report a violation and failure on the part of the Public Prosecution and the court to initiate an investigation into the matters. *Jasar v. the Republic of Macedonia* (application no. 69908/01)

to the requirements laid down in Article 3 of the Convention.[94] In the opinion of ECtHR, there has been a violation of Article 3 of the Convention in its procedural aspect on account of the failure of the respondent State to carry out an effective investigation into the applicant's allegations of police brutality.

This recommendation is also incorporated in the 2006 Annual Report of the Government Agent:

> *"Analysis of individual cases related to criminal matters resulted in identification of certain problems in the laws that govern criminal procedures and work of the public prosecutor. Notably, several cases point to the identical failure to take any investigative measures after having received the criminal charges related to torture motioned against unknown perpetrators who are MOI employees. The Ministry of Interior has not taken any steps to identify these persons, and the communication between the Ministry of Interior and the Public Prosecution also failed to reveal their identity. Inactivity on the part of the public prosecutor prevents the victims to initiate proceedings as subsidiary plaintiffs and thus hinders their right to address the competent court. At the same time, absence of any investigation procedure into allegations that the claimant was subjected to inhuman and degrading treatment by the police during the arrest inevitably results in violation of Article 3 of the Convention (prohibition of torture). Analysis is needed of laws (Law on Criminal Procedure, Law on Police, Law on Public Prosecution) and bylaws that regulate this area, in order to overcome these problems."*

This recommendation is repeated in the following reports developed by the Government Agent, but to present relevant changes are not made to the laws[95] with a view to implement these requirements. Not only did the situation remain the same in 2009, but the number of cases affected by these general measures increased as well.[96]

94 This position is repeated in all judgments related to violation of Article 3 of the Convention.

95 The new Law on Criminal Procedure introduces several changes, but they must be reconsidered in the context of legal circumstances that would prevail at the time when the Law's enforcement starts (this was initially anticipated for 2012, but the Law's enforcement was postponed and may be subject to future delays).

96 2009 Annual Report of the Government Agent (http://www.pravda.gov.mk/documents/godisen%202009%20usvoen%20za%20objava.pdf) emphasizes that: Special problem is the execution of four judgments which establish the violation of the right to efficient investigation in cases related to torture by the police. MOI informed that it had abandoned the concept developed with OSCE support and promoted in Strasbourg and that it had opted for another

Unless adequate, effective and efficient investigation takes place, the general legal prohibition of torture and inhuman and degrading treatment and punishment – despite its essential importance – would be ineffective in practice and in some cases it would allow agents of the State to abuse this right, without any risk of being sanctioned.

ECtHR repeated its position in the judgment taken in the case of El Masri, where it states:

*"It is in the interests of the applicant, and the efficacy of the Convention system, that the domestic authorities, who are best placed to do so, act to put right any alleged breaches of the Convention (*see *Varnava and Others,* cited above, paragraph 164)."

3.3.2. State responsibility in proceedings related to use of police powers

ECtHR pays special attention to effective investigation in cases that involve state agents authorized to use force and firearms.

For example, in the case of Saso Gorgiev[97], ECtHR holds that:

"... in a democratic society, the Court must subject allegations of a breach of this provision [Article 2 of the ECHR – A/N] *to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force, but also all the surrounding circumstances* (see *McCannand, Others v. the United Kingdom, 27 September 1995, paragraph 150, Series A no. 324).*

Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (Ibid., paragraph 57)."

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concept that includes internal control within the service. However, the results of this internal mechanism did not convince Strasbourg that it is a matter of effective independent mechanism for external control of law enforcement agencies (the police). On this account, unknown is how longer will this group of sensitive cases remain on the list of non-executed judgments. This problem must be resolved at the level of the Government of the Republic of Macedonia, and should include an analysis of the existing system, respect for the international practice and development of a mechanism that would produce results demonstrated in a series of specific cases.

97 *Saso Gorgiev v. the Republic of Macedonia* (application no. 49382/06, judgment of 2012)

This judgement clearly indicates ECtHR's position that in a given case it is not only a matter of carrying an investigation and identifying the offender, but all circumstances that have led to improper use of force by the police should be investigated as well.

Moreover, in the exposition of its judgment, ECtHR clearly explains that the State's positive obligation entails:

> *"... a primary duty on the State to put in place a legislative and administrative framework designed to provide effective prevention. This framework must include regulations geared to the special features of certain activities, particularly with regard to the level of the potential risk to human lives. The State must display the utmost diligence and define the limited circumstances in which law-enforcement officials may use firearms (see Abdullah Yilmaz v. Turkey, no. 21899/02, paragraphs 56 and 57, 17 June 2008)."*[98]

According to ECtHR, the State is obliged to (by means of general measure that needs to be implemented) establish high professional standards within the law-enforcement system and ensure that officers serving in these systems meet these criteria.

In addition to high standards, ECtHR insists[99] on necessary technical training to be delivered to officers authorized to carry firearms, as well as to those tasked to control their performance.

In the case of *Saso Gorgiev v. the Republic of Macedonia*, ECtHR concluded that the response received from the Government in relation to procedures on recruitment and training of persons authorized to carry weapons did not include such information:

> *" ... the Government did not inform whether any assessment has been made by the national authorities if R.D. had been fit to be recruited and equipped with a weapon, which had led to the incident in question. In such circumstances, the Court considers that the harmful action that R.D. took in the bar must be imputable to the respondent State. For the Court, and having regard to its case-law, the State's duty to safeguard the right to life must also be considered to involve the taking of reasonable measures to ensure the safety of individuals in public*

98 *Saso Gorgiev v. the Republic of Macedonia* (application no. 49382/06, judgment of 2012). This application concerns Article 2 of the ECHR. The applicant complained that his life was endangered by means of actions taken by a state agent (the applicant was injured from a bullet shot by a reserve officer in the police).

99 Ibid

places and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see Ciechońska v. Poland, no. 19776/04, paragraph 67, 14 June 2011).“

This recommendation provided by ECtHR should be reconsidered in the context of the case of Martin Neskovski's murder and the required assessment of recruitment standards that were (not) applied in this case.[100]

In this judgment, special attention is given to the fact that the law was breached by a person whom the State has entrusted with use of weapon. Hence, ECtHR includes an explicit message:

"The Court accepts that the authorities could not have objectively foreseen the applicant's behaviour of insubordination and his subsequent vendetta in the bar. However, it underlines that the State has to put in place and rigorously apply a system of adequate and effective safeguards designed to prevent its agents, in particular temporary mobilised reservists, to abuse official weapons made available to them in the context of their official duties. The Government did not inform of any regulations in force in this respect. In this connection the Court refers to section 26 of the Internal Affairs Act, which required that State agents, as was R.D., performed their duties 'at all times, whether on or off duty'. Apparently, the application of this provision had obvious benefits for the society, but it also involved some potential risk. The permanent engagement of State agents as police officers required that they always have official weapons in order to exercise their duties."

ECtHR determined that the role of state institutions is extremely important in cases where the defendant appears as a police officer or other public official authorized to apply force, and it further elaborated the responsibility of competent officers in terms of negligence (which cannot be subsumed under torture, but has resulted in consequences for the applicant):

"Compensation for the non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies if the infringement of the right to personal integrity is not caused intentionally or in cases not related to a treatment contrary to Article 3 of the ECHR, but concern failure on the part of authorities to protect

100 http://www.utrinski.com.mk/?ItemID=41626A6CE37DF644A2B3B-0863BE03898

persons from violation of their rights as stipulated under Article 3 of the Convention."

2012 amendments to the Law on Police[101] failed to introduce changes that would implement these guidelines. On one hand, Article 81[102] of the Law on Police stipulates that cases involving mild bodily injury, which constitutes a criminal act, shall not be decided by the court, but by the immediate commanding officer on duty who is entrusted with the role of forensic expert and should differentiate between mild bodily injury and other injuries. According to the Ministry of Interior, if the case involves severe bodily injury or death, it would not be decided by the said police officer, but by a higher and more qualified body within MOI: the Sector for Internal Control. If the consequences (bodily injuries) are not a result of use of firearms, then there is no need to inform the public prosecutor thereof. In this regard as well, legislative changes do not refer to the court as the instance competent to decide in these cases. On the other hand, in spite of all recommendations put forward as part of ECtHR judgments, no changes were introduced in relation to investigation in cases of abuse of office, torture, harassment, etc.

Article 36[103] of the Law on Police (whose enforcement will start on 1.12.2013) introduced a change that is related to the general requirements, whereby "actions taken upon personal assessment" are replaced with

101 *Official Gazette of the Republic of Macedonia* no. 145/2012

102 "In cases when coercion means are used as part of police powers, the police officer who has used them and his/her commanding officer who has ordered the use thereof shall be exempted from any liability.
The commanding officer shall be responsible for assessing the necessity, justifiability and adequate use of coercion means in individual cases. The commanding officer shall inform the competent public prosecutor on all cases in which firearms were used.
The organizational unit at the Ministry of Interior tasked with internal control and professional standards shall be responsible for assessing the necessity, justifiability and adequate use of coercion means in cases of severe bodily injuries or death or in cases when coercion means have been used against several persons, in particular by reconsidering the circumstances under which the coercion means had been used and shall develop a report with an opinion on the necessity, justifiability and adequate use of coercion means, which shall be submitted to the Minister of Interior."

103 Article 36 of the Law on Amending the Law on Police ("*Official Gazette of the Republic of Macedonia"* no. 145/2012)
The police officer shall apply police powers according to his/her own assessment, upon the order issued by his/her commanding officer, upon the request from a competent court or public prosecution office, PURSUANT to the Law.
The police officer shall be obliged to execute the orders referred to in paragraph 1 of this article, unless the execution thereof constitutes a criminal act.

"actions taken ex officio", while the words "on the request from a competent court or public prosecution office" are replaced with "on the orders issued by a competent court or public prosecution office".

Without further specifications of the procedures on identifying use of coercion means beyond the police powers, in essence, there are no actual possibilities to establish justified use of weapons and no independent investigation being carried out outside the Ministry of Interior.

The case of *Saso Gorgiev v. the Republic of Macedonia,* where the applicant sought protection of his right to life (pursuant to Article 2 of the ECHR) *(application no. 49382/06)* is particularly important because reference is made to an identical situation in several paragraphs.[104]

3.3.3. Role of the Public Prosecution

Execution of judgments taken in cases where state agents with special powers and authorizations to use force have committed the violations does not imply mere improvement of standards, but greater activity on the part of public prosecution offices and establishment of an independent body that would be tasked to investigate cases on violence committed by police offices, i.e., state agents.

The public prosecutor is obliged to investigate whether such criminal acts actually occurred. Nevertheless, in the case of Saso Gorgiev, after being presented with the criminal charge, the public prosecutor did not take any effective action, except for the request to the Ministry of Interior related to additional information and notifications. Moreover, the

104 http://www.sitel.com.mk/policaec-pukal-vo-raspravija-so-kumanovchanec
http://www.dnevnik.com.mk/default.asp?ItemID=F123C565D6E9824AB-DA8D52D70CE15A6
http://press24.mk/story/makedonija/policaec-pukal-vo-starata-skops-ka-charshija
http://www.mkd.mk/16653/crna-hronika/policaecot-pukal-za-da-si-ja-zasti-ti-maloletnata-kerka/
http://www.kumanovonews.com/vesti/hronika/policaec-pukal-vo-traktor-vo-brzak.html
http://www.kanal5.com.mk/default.aspx?mId=37&eventId=78630
http://www.ereporter.com.mk/mk-mk/Details.aspx?Title=15419
http://daily.mk/cluster/ffc795a2554c4ae2d878f4450f6a7ddb
http://tocka.mk/1/73025/policaec-na-ulica-pukal-vo-kuce-koe-go-branelo-svojot-sopstvenik
http://www.kanal77.com.mk/mk/vesti/svet/item/1611-policaec-od-demir-hisar-pukal-kon-lice-koe-diveelo-vo-barot-na-brat-mu
http://telma.com.mk/index.php?task=content&cat=1&rub=6&item=19491
http://www.dnevnik.com.mk/default.asp?ItemID=554B1F040462D6458B-C8FD83B5FF8B47

prosecutor did not take measures to identify the police officers involved in the raid or to gather addition information as to whether witnesses or police officers were interrogated about the incident. It was not determined whether there was a possible justification for the physical force used against the applicants. In conclusion, the public prosecutor did not take any steps to find evidence that confirm or deny applicants' allegations.

In the past period, no changes were made in relation to several judgments taken by ECtHR where it has identified problems in criminal matters and which imply the need for general measures (legislative changes) to be taken, including changes to the criminal procedure, amendments to the legislation governing the work of public prosecution offices and the legislation governing the work of the police (cases of Jasar and Stoimenov, respectively).[105]

ECtHR is of the standing that the public prosecutor's request for information addressed to the competent authorities does not suffice in terms of implementing a thorough, adequate and sufficient investigation. In this regard, special attention is given to the actions taken by the public prosecutor. This is clearly emphasized in ECtHR judgment taken in the case of El Masri[106]:

> *"Apart from seeking information from the Ministry, she [public prosecutor] did not undertake any other investigative measure to examine the applicant's allegations.*
>
> *The public prosecutor ruled on the sole basis of the papers submitted by the Ministry of the Interior. She did not consider it necessary to go beyond the Ministry's assertions. When rejecting the applicant's complaint, she relied exclusively on the information and explanations given by the Ministry, whose agents were, broadly speaking, suspected of having been involved in the applicant's treatment.*
>
> *Having regard to the considerable, at least circumstantial, evidence available at the time of the submission of the applicant's complaint, such a conclusion falls short of what could be expected from an*

105 69908/01 final judgment of 15.5.2007; last examined: 1007-4.2 "Lack of effective investigation, since 1998, into allegations of ill-treatment of a Roma by the police (procedural violation of Article 3). As the Public Prosecutor has not yet taken a decision on the complaint filed by the applicant on 28/05/1998, the latter is still barred from taking over the investigation. In fact, domestic law provides that if the public prosecutor finds no grounds for instituting or pursuing criminal proceedings, his role may be assumed by the injured party acting as a subsidiary prosecutor.

106 *El Masri v. the Republic of Macedonia*

independent authority. The complexity of the case, the seriousness of the alleged violations and the available material required independent and adequate responses on the part of the prosecuting authorities.

The Court considers that the prosecuting authorities of the respondent State, after having been alerted to the applicant's allegations, should have endeavoured to undertake an adequate investigation in order to prevent any appearance of impunity in respect of certain acts.

In view of the above considerations, the Court concludes that the summary investigation that has been carried out in this case cannot be regarded as an effective one capable of leading to the identification and punishment of those responsible for the alleged events and of establishing the truth."

Particular problem is also the fact that although the Committee of Ministers considers the cases are not fully executed (especially due to non-implementation of general measures) the relevant authorities that should implement these measures lack awareness on the need for (further) changes. For example, in response to the recommendations concerning the need for significant changes to the legislation governing the work of public prosecution offices with a view to ensure effective investigation in the cases of reasonable suspicion for torture, the Public Prosecution explained that it was a matter of "isolated case that is unlikely to be repeated" and that "necessary changes have been taken, as required in the judgment".[107]

This shows that the Public Prosecution is neither aware nor willing to address the problem that has been continuously indicated in ECtHR decisions.

A serious approach on the part of the State towards implementation of these recommendations would have most certainly lead to an investigation different from the one carried out in the case of Martin

107 In the opinion of the public prosecutor: "Statute of limitations apply in the case of Jasar, which is not a result of system problems, but an individual procedure carried out by the then current basic public prosecutor in Stip, who no longer holds this office. However, in relation to the implementation of general measures for the purpose of executing ECtHR judgment, it was indicated that the drafting process for the new Law on Public Prosecution from 2007 made due consideration of the judgment taken in the case of Jasar, in order to avoid similar problems and shortfalls in the work of public prosecutors." Information on the Visit to the Department on Execution of Judgments of the European Court of Human Rights. Available at: http://www.pravda.gov.mk/documents/Informacija.pdf.

Neskovski[108] or in the case of the police officer who killed two persons on a parking lot in Gostivar,[109] or in the numerous mysterious homicide cases and cases of suicide at closed institutions.[110]

Last amendments to the Law on Public Prosecution were adopted in 2008. This means that the Law does not implement any of the proposed changes.

As was the case with the judges, there is no data available indicating that a public prosecutor or a deputy public prosecutor has assumed responsibility for such case, i.e., a case that was "annulled" in Strasbourg.

When proceeding in cases where there are indications that police officers or other state agents with special authorizations were involved in an act of inhumane treatment, ECtHR reconsiders the following aspects:

- whether the public prosecutor has taken investigative measures after being presented with the criminal charges;
- whether the domestic authorities have taken steps to identify who was present during the applicant's apprehension or at the time when the applicant was injured, or whether there are witnesses, affected police officers or an MD who has examined the applicant, which could be interrogated about the applicant's injuries;
- whether the public prosecutor has taken steps to secure evidence that confirms or rejects applicant's allegations of inhumane treatment?

In ECtHR's opinion, the public prosecutor's request for additional information from the Ministry of Interior, in the form of an investigative measure, does not suffice. According to ECtHR, neither the public prosecutor nor the court can consider operative indications of the Intelligence Service as sufficient in order to justify:

..."'reasonableness' of the suspicion on which his arrest and detention had been based."[111]

108 Interview with the Minister of Interior. Available at: http://www.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=10237&mid=710&tabId=358&tabindex=0.

109 http://www.time.mk/cluster/a285e62582/dvojno-ubistvo-vo-gostivar.html, http://www.plusinfo.mk/vest/35281/Koj-e-osomnicheniot-policaec-Jakim-Trifunovski

110 http://www.sitel.com.mk/dnevnik/makedonija/istraga-za-samoubistvoto-na-pritvorenichkata-vo-tetovskiot-zatvor

111 *Lazoroski v. the Republic of Macedonia* (application no. 4922/04, judgment of 2009). This application considers Articles 2, 5 and 6 of the ECHR. The appli-

This means that except for the information/confirmation obtained by MOI, for a suspicion on the basis of which a person was apprehended to be considered reasonable necessitates a number of other elements. If this is considered in conjunction with the fully unlimited discretionary assessment awarded to the judges, an impression is created that the entire judicial system, when acting in general, and especially in cases involving police officers, is based on a range of “free assessments and convictions” of:

- the commanding police officer and/or Sector for Internal Control at MOI;
- the public prosecutor; and
- the court.

Hence, it is almost certain that if all three postulates are based on arbitrariness, the final outcome would also be arbitrary and by no means legal.

3.3.4. Detention and other types of incarceration

Detention is an old wound of the judiciary system in Macedonia, which is duly indicated as a problem in ECtHR judgments. ECtHR is very straightforward in its messages addressed to Macedonian judicial authorities (the court as an authority that issues detention orders and the public prosecutor as an authority that submits motions for detention):

> *“The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention. However after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty“.*[112]

ECtHR goes a step further and makes a clear indication of its preference for a release instead of detention as a regular course of actions taken in regard to suspects/accused:

> *“The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 [of the Convention] does not give*

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cant complained of being illegally detained, not being informed of the reasons for his apprehension and that his lawyer was prevented from being present during his interrogation, while the apprehension was performed without a court order.

112 *Vasilkoski and Others v. the Republic of Macedonia* (application no. 28169/08, judgment of 2010). This application concerns Articles 5 and 13 of the ECHR. The applicants complained of being issued detention on unreasonable grounds.

judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are 'relevant and sufficient' reasons to justify the continued detention."[113]

On one hand, ECtHR clearly indicated that the decision taken by the residing court cannot and must not be based on discretionary assessment (*does not give judicial authorities a choice*). On the other hand, ECtHR expressed its opposition to taking the judgment's gravity as a sole relevant element that would serve as basis for assessing the risk of absconding. According to ECtHR:

"... the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial."[114]

ECtHR pays special attention to the possibility to use detention as a type of punishment. In this regard, it especially emphasized the situation in which detention is continued by using the same formulation and identical wording without essential explanation of the need to continue the detention:

*"In this connection, the Court points out that although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial. Nor can continuation of the detention be used to anticipate a custodial sentence (*see *Letellier v. France,* 26 June 1991, § 43, Series A no. 207*; Muller v. France,* 17 March 1997, § 43, *Reports* 1997-II*; Yağcı and*

113 Ibid
114 Ibid

> *Sargın,* cited above, § 52; and *Korchuganova v. Russia,* no. 75039/01, § 73, 8 June 2006)*."*[115]

The next problem identified by ECtHR is the practice on issuing collective detention orders (found by ECtHR to be incompatible *per se* with Article 5, paragraph 3 of the ECHR). According to the Court, every member of the group needs to undergo case-by-case assessment (if the detention order involves a group of persons):

> *"It appears that they had little if any regard to the applicants' individual circumstances, as their detention was extended by means of collective detention orders. The practice of issuing collective detention orders has already been found by the Court to be incompatible, in itself, with Article 5 § 3 of the Convention in so far as it would permit the continued detention of a group of persons without a case-by-case assessment of the grounds for detention in respect of each individual member of the group. (see Dolgova v. Russia, no. 11886/05, § 49, 2 March 2006)."*[116]

Contrary to ECtHR judgements containing this recommendation, no changes have been made in regard to the practice on issuing detention orders.[117]

On several occasions detention at psychiatric facilities was perceived as disputable in the Republic of Macedonia (especially in terms of the facts that there are no legal grounds for that).[118] In the opinion of ECtHR:

> *"The detention of an individual is such a serious measure that it is only justified where other, less severe, measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see Witold Litwa v. Poland, no. 26629/95, § 78, ECHR 2000-III)."*[119]

115 Ibid

116 Ibid

117 An example of this is seen in the *Cobweb* case, which brought to the surface the fact that all problems, errors and shortfalls that have been indicated in ECtHR previous judgments, were repeated in this case. (http://www.utrinski.com.mk/?ItemID=F6B9FD0B0BAC5F43BB60ABF0561A0690) (http://www.vecer.com.mk/default.asp?ItemID=61FDC44EE2B8D14B890D526CF3F5A604); Case of Vraniskovski (http://www.poa-info.org/vesti/2013/02/20130212.html)

118 ttp://www.mhc.org.mk/system/uploads/redactor_assets/documents/281/______________________________.pdf

119 *Trajce Stojanovski v. the Republic of Macedonia* (application no. 1431/03, judgment of 2009

3.4. FREEDOM OF EXPRESSION

Particularly impressive is the case related to the prohibition for registration of the Association of Citizens "Radko"[120]. ECtHR's judgment in this case specified the individual and general measures that have not yet been implemented by the State (although the authorities claim to have made the required changes in the legislation).

ECtHR paid special attention to determining the essence of freedom of expression and to the need for appropriate harmonization of both, the legislation and the courts' case-law (including the Constitutional Court of the Republic of Macedonia). In ECtHR's opinion:

> *"Freedom of expression is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'".*[121]

According to ECtHR, tensions are possible and even certain divisions of opinion and positions in the society, however that is one of the unavoidable consequences of pluralism. According to ECtHR:

> *"The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other."*[122]

The new Law on Associations and Foundations[123] from 2010 still contains a broad provision[124] related to prohibition of establishment

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120 *Association of Citizens Radko & Paunkovski v. the Republic of Macedonia* (application no. 74651/01, judgment of 2009)

121 Ibid

122 Ibid

123 Law on Associations and Foundations, "*Official Gazette of the Republic of Macedonia"* no. 52/2010

124 Article 4:
(1) The right to freedom of association shall be exercised by means of establishing associations, foundations, trade unions and branch offices of foreign organizations (hereinafter: organizations) for the purpose of attainment of their goals, activities and protection of rights, interests and convictions, pursuant to the Constitution and the law.
(2) Establishment of an organization shall be prohibited in the case the organization's program and its actions are directed at violently destructing the constitutional order in the Republic of Macedonia, encouraging and inciting military aggression and stirring ethnic, racial or religious hatred or intolerance, performing terrorism-related activities, performing activities that are contrary to the Constitution or the laws and violating the freedoms and rights of others.

of associations, which can be used in cases similar to “Radko”. The formulation used under this prohibiting provision from the Law leaves broad space for interpretations and the possibility for certain associations not to be registered.

4. RECOMMENDATIONS

For the purpose of defining recommendations, we started from the premise that execution of ECtHR judgments is a tool for further development of ECHR's implementation and for protection of rights and freedoms defined therein, as well as for promotion of the judicial system in Macedonia, in line with advanced international trends.

On one side, execution of ECtHR judgments is the minimum requirement for realization of commitments assumed by the State. On the other side, it implies introduction of a precedential law, however not in the capacity of additional segment, but rather as part and parcel of day-to-day work of all courts in the Republic of Macedonia, including first instance and courts of appeal, administrative courts and the Supreme Court, irrespective of the type of proceedings led before them (civil, administrative or criminal).

The next step in development of such system of norms, institutions and practices that would ensure exercise of rights, their protection and sanctions for infringement of rights, includes implementation of recommendations provided in the specific judgments taken against the Republic of Macedonia, but also integration of ECtHR's case-law as expressed in the recommendations provided in the judgments taken against other States, as well as in the general and individual guidelines issued by the Court.

Recommendations put forward in this document will focus only on the aspects pertaining to ECtHR judgments taken upon complaints (applications and petitions) initiated against the Republic of Macedonia (as the first step in the process for implementing the Court's case-law):

1. **First group of recommendations is related to** activities that should be taken as direct actions for the purpose of changing the current

system of norms related to transposition of ECtHR decisions in the Macedonian law and case-law, as follows:

1.1. As regards the Law on Execution of ECtHR Decisions, the following actions need to be taken:

- To develop an action plan for execution of ECtHR judgments and to adjust the deadlines governing processing of particular stages in execution of judgments;
- To define the relations between the Interdisciplinary Commission and the Committee of Ministers (department tasked to monitor execution of ECtHR judgments);
- To define the role of the Constitutional Court in execution of ECtHR judgments (both in terms of judgments taken in cases that were presented to this court and, more broadly, in terms of developing the system on protection of human rights as part of Constitutional Court's jurisdiction);
- To adopt/amend the Rules of Procedure of the Interdisciplinary Commission, by precise definition of procedures on execution of ECtHR judgments (list of entities that should be notified, manner of information dissemination, cooperation procedures, development of action plans and responsible holder of activities from the action plan...);
- The issue of prolonged victimization or inability of successful applicants before ECtHR to pursue the complex route of repeating the proceedings in front of domestic courts requires more complicated legislative changes. One option is to task the Ombudsman, upon a motion and on behalf of the applicant, to initiate and complete these proceedings. Another option would be to task a special organizational unit within the Government Agent or even establish a new organizational unit to perform these activities that would implement not only judgments taken by ECtHR, but judgments taken by any other ratified international court or tribunal. And finally, another option would be to task the Bar Chamber or a group of attorneys-at-law to pursue these proceedings, for which they would be adequately reimbursed.

1.2. As regards the current institutional solutions, the following actions need to be taken:

- To establish or separate an individual operative body that would be tasked to implement ECtHR judgments and that would not

be integrated in the organization of the Ministry of Justice, but would be responsible to the Government or the President of Republic of Macedonia. Hence, this organization/structure would be given certain level of autonomy, but also the possibility to coordinate activities of a number of actors involved in the execution process;

- To establish the Interdisciplinary Commission not as operative body, but as structure for exchange of information, analyses and initiation of systemic changes;
- To unbundle the Bureau for Representation of Republic of Macedonia in front of ECtHR from the organization unit tasked with execution of ECtHR decisions;
- All constituting members of the Interdisciplinary Group for ECtHR, including the Constitutional Court, should and could introduce standing, albeit *ad hoc*, working units tasked to monitor decisions taken by ECtHR and other international (both ratified and non-ratified) judicial instances. This would enable their engagement in continuous and permanent harmonization of domestic legislation in line with international law.

1.3. <u>As regards the operative work and information dissemination concerning ECtHR judgments, the following actions need to the taken:</u>

- To provide adequate explanation of judgments and especially of activities that should be taken by the State;
- To disseminate information on actions initiated in relation to specific judgments (action plans, individual and general measures);
- To disseminate information on actions that can be pursued by applicants within the domestic judicial system and based on judgments taken by ECtHR;
- To disseminate information on the situation related to payment of redress awarded by ECtHR.

1.4. <u>Urgent legislative amendments, i.e., revision of new legislation, should include:</u>

- new Law on Police, whose enforcement will start in December 2013, but it does not include any specific provisions that would imply unbiased application of ECtHR recommendations in practice;
- new Law on Criminal Procedure, adopted in 2010, whose enforcement is continuously delayed (pursuant to the last

changes made in August 2012, the Law's enforcement will start on 1 December 2013), should be addressed in terms of:

- lack of previous analyses concerning ECtHR judgments when drafting the relevant legislative act in order to implement ECtHR recommendations, i.e., the need to make necessary analyses and initiate changes based on analysis results; and
- identification of relations between changes made and ECtHR recommendations as part of the rationale for adoption of the legislative act in question.

2. Second group of recommendations is related to introduction of specific legal principles in the domestic legislation and case-law:

- Introduction of the principle "unity of all proceedings" according to which anterior proceedings, primarily administrative, but also the possible mediation and similar proceedings, and posterior proceedings, i.e., executive proceedings, are considered integral part of any court proceedings. In that regard, there is need for legal provisions by means of which the courts, primarily courts of first instance, would be obliged to ensure execution, i.e., implementation of its rulings. Several options can be reconsidered for this issue, including the obligation on initiating criminal proceedings against the persons who are preventing/ hindering execution of rulings (instead of law-stipulated fines or minimum imprisonment sentence that can be easily evaded) or for example taking decisions on freezing budget assets of state administration bodies that have not implemented the court ruling in question, etc.;
- Introduction of the principle "limited re-delegation" from higher instance to lower instance court. This solution is already integrated in the Law on Administrative Disputes and should be replicated in other areas as well[125];
- Introduction of the principle "minimum orders for detention". Changes should be made to the Law on Courts and the Law on Public Prosecution, primarily geared towards curtailing practices related to issuance of detention orders:

125 Article 35, paragraph 3 of the Law on Administrative Disputes: "In cases where the judicial council has established that the ruling that has been appealed is based on essential violation of provisions from the present or other law or it is based on erroneously and incompletely determined facts, and when the ruling has already been cancelled, the Higher Administrative Court shall schedule a hearing and shall take a decision based on the merits in the case".

  - need to formulate an imperative legal provisions that would prefer liberation instead of detention;
  - formulation of protection mechanism that would prevent detention orders to be used as punishment without having proved guilt or as punishment of higher order compared to imprisonment;
  - sanctions to be imposed for rationale-free and factual collective decisions that issue/propose detention of suspects;

» Introduction of the principle "admissible evidence". Most urgent are changes needed in the field of adopting rules governing collection, examination and admission of evidence and rules governing selection of witnesses and manner of their interrogation. From the above, it is obvious that legal voluntarism has in practice became an integral part of proceedings on all levels: from the police, through the public prosecution, all the way to the judges, are all entrusted with unconditional competence guaranteed by law, i.e., they are entitled to discretionary assessment and admission of evidence. However, in several judgments ECtHR notes: *"...While Article 6 guarantees the right to a fair hearing it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law"*. Therefore, adoption of such rules as part of litigation and criminal procedures and proceedings led by the courts, would in practice imply implementation of these rules by the public prosecution and the police should they wish a successful outcome of court proceedings. At the same time, changes are needed to relevant articles from Law on Criminal Procedure (Article 15) and Law on Litigation Procedure (Article 8) in order to establish the premise that both parties in the dispute, as equals, are allowed to prove their respective theses for charges/lawsuit purposes or for defence purposes. Discretionary assessment by judges could be applied only and exclusively in cases of approximately equal strength of evidence that were legally collected, tested and admitted, provided that the court is able to provide a rationale for its "free assessment and conviction".

» Introduction of thorough and precise procedures that guarantee independent investigation. Changes are needed to the Law on Criminal Procedure, Law on Police, Law on Public Prosecution and Law on Courts, with a view to address some of

the recommendations provided by ECtHR related to adequate protection of the rights guaranteed under Article 3 of the ECHR:

- establishing precise and efficient institutions and procedures for thorough investigation of all cases for which indications have been made about possible overstepping of competences held by state agents with special powers (especially in cases of use of firearms);
- establishing an obligation to notify the public prosecutor of all cases in which injuries (or death) have been inflicted by state agents with special powers and guaranteeing implementation of an independent investigation into these allegations;
- establishing a police unit at the Public Prosecution that will be independent from the Ministry of Interior;
- all appeals that include allegations for torture or maltreatment inflicted by state agents with special powers should be investigated ex officio, and should not depend on motions raised by the damaged party or a third party;
- broader understanding is needed of State's obligations related to actions taken by state agents with special powers, including establishment of high professional standards, adequate training, recruitment and employment procedures, as well as a system of accountability including in cases of negligence;
- entrusting the public prosecutor with greater jurisdiction in investigations involving suspected/accused state agents with special powers and with the obligation to act immediately and in a clear procedure for detailed investigation that would result in finding evidence against the suspect/defendant;

» Introduction of the principle "the following day", which means adoption of secondary legislation stipulating tight timeframes for delayed court hearings. Notably, if the main hearing is interrupted, the same should be re-scheduled for the next working day, unless a need has been established for a less or more complicated forensic expertise, in such case the hearing should be delayed for a maximum of seven working days. Or, in order to summon additional witnesses, the main hearing should be re-scheduled within three working days, but only under special conditions, etc. Such exceptionally tight deadlines should be even stricter **in special diligence cases,** which include labour relations, payment of pension benefits, payment of medical subsidies, etc.

3. Third group of recommendations is related to introduction of thorough changes in the understating of the legal system:

- Having in mind that portion of violated segments comprising Article 6 of the Convention also represent violations of relatively restrictive domestic rules, such as, for example, prohibition to declare incompetence in the absence of another competent court or body, as well as the principle on "equality of arms", possible legal changes should be related to punitive or selective regulations. Namely, it is equally important to introduce **individual and collective responsibility of judges** whose rulings have been cancelled by ECtHR or any other international court or tribunal, as well as to introduce provisions that would stipulate responsibility of judges and prosecutors in cases where it has been established that they have violated the basic principles defined in the Convention. For example, this could be done by means of dismissal from office (judge or prosecutor) or declaring them incompetent to perform these offices, i.e., inability to appoint them to higher offices and the like. Consequently, a system of responsibility should be developed for **public prosecutors** involved in adoption of decisions that have been contested in front of or cancelled by means of ECtHR judgments.
- Changes are needed also to the Law on Association and Foundation, that would:
  - favour **freedom of expression** instead of limitations (especially in cases involving ideas that are not generally accepted or are accepted by fewer people);
  - ensure **tolerance** not based on unified thinking, but on the basis of respect for conflicting opinions;
  - Expanding the **"open gate"** approach to other international courts. Relatively indisputable and nomotechnically simplified change is resolution of systemic contradictions that are currently in favour of ECtHR, and introduction of decisions taken by other international courts or tribunal whose jurisdiction has been recognized by the Republic Macedonia by means of ratification of the relevant international treaty. Notably, Article 18 of the Law on Courts is already acknowledging these courts, but remaining provisions from this law and from other laws need to be harmonized (Articles 26 and 37 of the Law on Courts, Article 400 of the Law on

Litigation Procedure, etc.), especially the provision that anticipates judicial reaction, including re-examination of the case, only when ECtHR has adopted a final judgment.

5. CONCLUSION

All judgments taken by ECtHR upon applications motioned against the Republic of Macedonia imply an error in the protection of human rights and fundamental freedoms guaranteed under ECHR. Such errors have been made as a result of inadequate legislation, inadequate institutional solutions or due to inadequate practices.

The State is obliged **to execute judgments** taken by ECtHR upon applications motioned against the Republic of Macedonia.

Execution of ECtHR judgments taken upon applications motioned against the Republic of Macedonia cannot and must not be reduced to payment of redress awarded by ECtHR or set by means of friendly settlement, as it implies a more complex and coordinated action on the part of several actors.

Execution of ECtHR judgments taken upon applications motioned against the Republic of Macedonia is – first and foremost – the minimum level of implementation of provisions contained in ECHR, and implies acknowledgment of State's responsibility in terms of limiting or restricting the rights as stipulated in the Convention (contrary to the possibility to stipulate greater rights than those allowed by the Convention), i.e., the State's responsibility for inappropriate/insufficient protection in cases of violation of rights and fundamental freedoms enjoyed by all.

Execution of judgments must be transparent and must include as many as possible stakeholders, in order to guarantee that these judgments are becoming source of law and in order to prevent future violations of same or similar types.

Future legislative changes must be pursued in a manner that would undoubtedly take into consideration ECtHR's recommendations put forward as part of its judgements taken against the Republic of Macedonia, as well as in judgments concerning other States, but have been cited within the judgments taken against the Republic of Macedonia.

In that, this should not mean exiting the palliative stage, i.e., adoption of temporary solutions based on poor nomotechnical provisions that cannot be implemented in practice, but should mean drafting of comprehensive, well-defined and legally viable solutions directed towards essential restructuring of the legal and judicial system in the Republic of Macedonia.

This also means provision of explanations and rationales for legislative changes that would clearly indicate the changes being pursued in compliance with ECtHR's recommendations, provision of references to specific articles and manners in which proposed changes would enable adequate proceedings and actions to be taken in identical or similar situations.

ANNEX 1

Methodology Used for Development of This Report

Development of this report relies on the use of methods of contents analysis and interviews.

State authorities competent to implement ECtHR judgments[1] were presented with a questionnaire developed on the basis of the right to free access to public information[2] (Freedom of Information), while the analysis of responses obtained provides the baseline for this report.

It should be noted that information disclosed by institutions/ authorities addressed with FOI applications are rather unequal (in terms of quantity and contents) and indicate to:

- Inability of certain state authorities to disclose the requested information, because they do not dispose with them;
- Inability of certain state authorities to disclose the requested information, because they do not know the subject matter;
- Visible ignorance on the part of some state authorities for the problem issue concerning execution of ECtHR decisions/ judgments;
- Absence of activities related to specific competences of some state authorities concerning the execution of ECtHR decisions/ judgments.

Moreover, the present report includes an analysis of several laws/ sections of laws and amendments adopted in the period from 2006 onwards. They include:

- Law on Execution of ECtHR Decisions;
- Law on Representation of the Republic of Macedonia in front of ECtHR;
- Criminal Code;
- Law on Litigation Procedure;
- Law on Criminal Procedure (current text and text of the 2010 law, whose enforcement will start on 1.12.2013);

1 Government of the Republic of Macedonia, Ministry of Justice, Ministry of Finance, Supreme Court, Constitutional Court, Higher Administrative Court, Public Prosecution of the Republic of Macedonia, higher and basic courts in the Republic of Macedonia.

2 For list of submitted FOI applications see annex 2.

- Law on Associations and Foundations;
- Law on Police (current law and 2012 Law on Amending the Law on Police, whose enforcement will start on 1.12.2013);
- Law on Internal Affairs;
- Law on Courts;
- Law on Public Prosecution.

Rules of Procedure adopted by the Interdisciplinary Commission for Execution of ECtHR Decisions and the Rules of Procedure adopted by the Constitutional Court were also analysed.

Baseline for the analysis included materials published on the official websites of the Ministry of Justice (Macedonian translation of a number of ECtHR judgments and reports developed by the Bureau for Representation of the Republic of Macedonia in front of ECtHR), Constitutional Court, Ministry of Interior, Supreme Court and the Council of Europe.

The present analysis targets 105 judgements taken by ECtHR, as well as reports and information prepared and submitted by the Government Agent in the period 2006-2011.

Interviews were carried out with the Government Agent of the Republic of Macedonia and 3 attorneys-at-law who have led cases in front of ECtHR.

ANNEX 2

List of FOI applications submitted to the relevant institutions regarding the implementation of the European Court of Human Rights judgements

FOI APPLICATIONS ADDRESSED TO THE BUREAU FOR REPRESENTATION OF THE REPUBLIC OF MACEDONIA IN FRONT OF THE EUROPEAN COURT OF HUMAN RIGHTS AT THE MINISTRY OF JUSTICE

Submission date 26.10.2012	**INFORMATION REQUESTED**
1.	Please provide a copy of the Rules of Procedure governing the work of the Interdisciplinary Commission for Execution of ECtHR Decisions.
2.	How many meetings were held by the Interdisciplinary Commission for Execution of ECtHR Decisions from its establishment until the submission of this FOI application? Please provide copies of the minutes for the meetings held.
3.	Please provide a copy of any analyses carried out by the Interdisciplinary Commission for Execution of ECtHR Decisions, in compliance with Article 11 of the Law on Execution of ECtHR Decisions, from the Commission's establishment until the submission of this FOI application.
4.	Please provide a copy of the procedures developed by the Interdisciplinary Commission for Execution of ECtHR Decisions for supervision of implementation of ECtHR judgments, in compliance to Article 11 of the Law on Execution of ECtHR Decisions, from the Commission's establishment until the submission of this FOI application.

5.	Please provide a copy of documents related to motions for legislative changes initiated by the Interdisciplinary Commission for Execution of ECtHR Decisions, in compliance with Article 11 of the Law on Execution of ECtHR Decisions, from the Commission's establishment until the submission of this FOI application.
6.	Please inform whether procedures have been initiated for establishing responsibility due to non-implementation or implementation of a judgment taken by the European Court of Human Rights, in compliance with Article 28 of the Law on Execution of ECtHR Decisions.
7.	What is the amount of budget funds allocated for implementation of judgments taken by the European Court of Human Rights for the years 2009, 2010, 2011 and 2012 (after the budget adjustment), in compliance with Article 4 of the Law on Execution of ECtHR Decisions?
8.	Which general measures have been issued by the Interdisciplinary Commission for Execution of ECtHR Decisions to the competent authorities aimed to eliminate a violation established by the Court and the consequences thereof, in compliance with Article 11 of the Law on Execution of ECtHR Decisions, from the Commission's establishment until the submission of this FOI application?
9.	Which individual measures have been issued by the Interdisciplinary Commission for Execution of ECtHR Decisions to the competent authorities aimed to eliminate violations established by the Court and the consequences thereof, in compliance with Article 11 of the Law on Execution of ECtHR Decisions, from the Commission's establishment until the submission of this FOI application?

10.	Please provide a copy of the notifications received by the Interdisciplinary Commission for Execution of ECtHR Decisions from the Bureau, including proposals for individual and general measures for implementation of judgments taken by the European Court of Human Rights, in compliance with Article 23 of the Law on Execution of ECtHR Decisions, from the Commission's establishment until the submission of this FOI application.
11.	Please provide a copy of the notifications received by the Interdisciplinary Commission for Execution of ECtHR Decisions from the state administration bodies and institutions concerning the manner in which the latter have proceeded upon the recommendations, in compliance with Article 24 of the Law on Execution of ECtHR Decisions, from the Commission's establishment until the submission of this FOI application.
12.	Please provide a copy of the notifications received by the Interdisciplinary Commission for Execution of ECtHR Decisions from the state administration bodies and institutions concerning the recommendations issued, in compliance with Article 24 of the Law on Execution of ECtHR Decisions, from the Commission's establishment until the submission of this FOI application.
13.	Please provide a copy of information which the Bureau for Representation in front of the European Court of Human Rights has forwarded to the Government of the Republic of Macedonia, in compliance with Article 15 of the Law on Execution of ECtHR Decisions, from the moment the Law entered in effect.
14.	Please provide a copy of information on finality of judgments which the Bureau for Representation in front of the European Court of Human Rights has forwarded to the Ministry of Finance, in compliance with Article 17 of the Law on Execution of ECtHR Decisions, from the moment the Law entered in effect.
15.	Please provide a copy of proposals for payment of redress submitted by the Ministry of Financed, in compliance with Article 17 of the Law on Execution of ECtHR Decisions, from the moment the Law entered in effect.

16.	Please provide a copy of payment receipts submitted by the Ministry of Finance, in compliance with Article 17 of the Law on Execution of ECtHR Decisions, from the moment the Law entered in effect.
17.	Please provide a copy of relevant documents indicating the finality of judgments taken by the European Court of Human Rights whereby it has established a violation of the rights guaranteed under the Convention and by means of which the Bureau is informing the Supreme Court, the Administrative Court, courts of first instance and all other institutions or entities that have been directly involved in the case for which the judgment is taken. This FOI application concerns the period after the Law on Execution of ECtHR Decisions entered in effect.
18.	To present, has the Government of the Republic of Macedonia decided, on the basis of information provided by the Bureau and concerning the contents of ECtHR judgment and liabilities of the Republic of Macedonia set therein, on the need to motion an application for having the case reconsidered by the Grand Chamber in cases when the Court has taken a final judgment, in compliance with Article 15 of the Law on Execution of ECtHR Decisions?
19.	Please provide a copy of the notifications that the Bureau has submitted to the Interdisciplinary Commission for Execution of ECtHR Decisions, accompanied with proposals for individual and general measures aimed to implement the judgments taken by the European Court of Human Rights, in compliance with Article 23 of the Law on Execution of ECtHR Decisions?
20.	Does the Interdisciplinary Commission for Execution of ECtHR Decisions keep records on payments made on the basis of ECtHR judgements, i.e., whether the Commission, in compliance with Article 11 of the Law on Execution of ECtHR Decisions, keeps a register of cases in which redress should be paid.

21.	What is the manner in which channels and procedures on issuing and receiving information related to implementation of ECtHR judgments have been established, i.e., are there written procedures on receiving information related to Court's judgments and to which instance and in which manner does the Interdisciplinary Commission provide such information?
22.	How did the Bureau act in case the Government of the Republic of Macedonia, on the basis of information received from the Bureau and concerning the contents of ECtHR judgments and liabilities of the Republic of Macedonia set therein, has motioned for reconsideration of the case by the Grand Chamber in cases when the Court has taken a final judgment, in compliance with Article 15, paragraph 3 of the Law on Execution of ECtHR Decisions?

FOI APPLICATIONS ADDRESSED TO THE MINISTRY OF FINANCE

Submission date 29.10.2012	**INFORMATION REQUESTED**
1.	Please provide a copy of payment receipts that serve as evidence that judgments taken by the European Court of Human Rights have been implemented in relation to the section setting a just satisfaction/redress, in compliance with Article 18 of the Law on Execution of ECtHR Decisions.
2.	Please provide a copy of draft decisions for payment of redresses awarded by ECtHR that have been submitted to the Bureau for Representation of the Republic of Macedonia, in compliance with Article 17 of the Law on Execution of ECtHR Decisions.

FOI APPLICATIONS ADDRESSED TO THE SUPREME COURT

Submission date 29.10.2012	INFORMATION REQUESTED
1.	Please provide a copy of notifications received on the finality of judgments taken by the European Court of Human Rights by means of which the Bureau is informing the Supreme Court. This FOI applications concerns the period after the Law on Execution of ECtHR Decisions entered in effect.
2.	How many principled positions and opinions were adopted by the Supreme Court with a view to provide guidelines on implementation of ECtHR decisions which have established a violation of the rights guaranteed under the Convention? Please provide a copy of principled positions and opinions taken.
3.	Please provide a copy of conclusions/minutes from the last meeting of the Interdisciplinary Commission for Execution of ECtHR Decisions held in 2012.

FOI APPLICATIONS ADDRESSED TO THE ADMINISTRATIVE COURT, APPEALS COURT IN SKOPJE, APPEALS COURT IN BITOLA, APPEALS COURT IN GOSTIVAR AND APPEALS COURT IN STIP

Submission date 29.10.2012	INFORMATION REQUESTED
1.	Please provide a copy of notifications on the finality of judgments taken by the European Court of Human Rights that have established a violation to the rights guaranteed under the Convention and by means of which the Bureau is informing the Appeals Court. This FOI application concerns the period after the Law on Execution of ECtHR Decisions entered in effect.

FOI APPLICATIONS ADDRESSED TO THE CONSTITUTIONAL COURT

Submission date 29.10.2012	**INFORMATION REQUESTED**
1.	Has the Constitutional Court received any notifications on the finality of judgments taken by the European Court of Human Rights wherein it established a violation of the rights guaranteed under the Convention and by means of which the Bureau informs the Constitutional Court. Please provide copies thereof. This FOI application concerns the period after the Law on Execution of ECtHR Decisions entered in effect.

FOI APPLICATIONS ADDRESSED TO THE HIGHER ADMINISTRATIVE COURT

Submission date 29.10.2012	**INFORMATION REQUESTED**
1.	Has the Higher Administrative Court received any notifications on the finality of judgments taken by the European Court of Human Rights wherein it established a violation of the rights guaranteed under the Convention and by means of which the Bureau is informing the Higher Administrative Court. Please provide copies thereof. This FOI application concerns the period after the Law on Execution of ECtHR Decisions entered in effect.

FOI APPLICATIONS ADDRESSED TO THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA

Submission date 29.10.2012	**INFORMATION REQUESTED**
1.	Please provide a copy of information that the Bureau for Representation in front of the European Court of Human Rights submits to the Government of the Republic of Macedonia in compliance with Article 15 of the Law on Execution of ECtHR Decisions, from the moment the Law entered in effect.
2.	Has the Government of the Republic of Macedonia decided, on the basis of information received from the Bureau for Representation in front of the European Court of Human Rights, on the need to motion an application for having the case reconsidered by the Grand Chamber in cases when the Court has taken a judgment? Please provide a copy of such conclusions (if they exist) on the basis of which a motion was initiated for having the case reconsidered by the Grand Chamber.
3.	What is the amount of budget funds allocated for implementation of judgments taken by the European Court of Human Rights for the years 2009, 2010, 2011 and 2012 (after the budget adjustment), in compliance with Article 4 of the Law on Execution of ECtHR Decisions?

FOI APPLICATIONS ADDRESSED TO THE JUDICIAL COUNCIL OF THE REPUBLIC OF MACEDONIA

Submission date 29.10.2012	**INFORMATION REQUESTED**
1.	Having in mind Articles 74 and 75 of the Law on Courts (Article 74, paragraph 1, item 2 and Article 75, paragraph 1, item 11), has the Judicial Council adopted a decision/ decisions on dismissal of judges who ruled in cases for which the European Court of Human Rights has established violation of the right to a fair trial pursuant to Article 6 of the ECHR and from which courts do the dismissed judges come from? Please provide a copy of the decision/decisions by means of which judges were dismissed on the above indicated grounds.

FOI APPLICATIONS ADDRESSED TO THE COURTS OF FIRST INSTANCE IN SKOPJE, VELES, GOSTIVAR, BITOLA AND STIP

Submission date 29.10.2012	**INFORMATION REQUESTED**
1.	How many procedures have been initiated on the grounds of Article 392, paragraph 7 (re-examination of a case in the light of protection of human rights and freedoms) from the introduction of this basis in the Law on Criminal Procedure until the submission of this FOI application and which cases do these procedures concern (name and surname of the applicant or reference number of the case led in front of the European Court of Human Rights); what is the current status/stage of these proceedings (final ruling, appeal in front of second-instance court, appeal in front of the Supreme Court, etc.)?
2.	How many cases were returned for re-examination upon a final judgment taken by the European Court of Human Rights in Strasbourg pursuant to Article 400 of the Law on Litigation Procedures from the introduction of this basis in the Law on Litigation Procedure until the submission of this FOI application and which cases do these procedures concern (name and surname of the applicant or reference number of the case led in front of the European court of Human Rights); what is the current status/stage of these proceedings (final ruling, appeal in front of second-instance court, appeal in front of the Supreme Court, etc.)?

ANNEX 3

Brief Introduction to the Republic of Macedonia's Commitments under ECHR

When a State ratifies the European Convention of Human Rights, it also commits to respect the jurisdiction of ECtHR. According to Article 32 of the ECHR, the jurisdiction of the Court extends to all matters concerning the interpretation and application of the Convention and the Protocols which are referred to it under the terms and conditions provided in Articles 33, 34, 46 and 47.

According to Article 42, judgments taken by the chambers are considered final, but the parties in the cases are allowed to appeal the judgment in front of the Grand Chamber. According to Article 43, within a period of three months from the date when the chamber has delivered the judgment, any party in the case may, in exceptional cases, request that the case be referred to the Grand Chamber. A panel of five judges of the Grand Chamber accepts the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance. The Grand Chamber decides the case by means of a judgment. According to Article 44 of the Convention, the judgment of the Grand Chamber is final.

ECtHR judgment becomes final when the parties declare that they will not request that the case be referred to the Grand Chamber; or three months after the judgment is delivered, if reference of the case to the Grand Chamber has not been requested; or when the panel of the Grand Chamber rejects the request on the basis of Article 43, i.e., when the Grand Chamber takes a judgment. The final judgment is then published.

ECtHR is obliged to give the reasons for its judgments as well as for its decisions by means of which it declares the applications as admissible or inadmissible. If a judgment does not represent, in whole or in part, the unanimous opinion of the siting judges, any judge is entitled to deliver a separate opinion in attachment to the judgment.

Final judgements are binding and enforceable. According to Article 46, the High Contracting Parties are obliged to abide by the final judgment of the Court in all cases they appear as parties.

The Court's final judgments are transmitted to the Committee of Ministers, which is responsible to supervise their execution. If the

Committee of Ministers considers that the supervision of execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case where it appears as one of the parties, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit in the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1. If the Court finds a violation of paragraph 1, it refers the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it refers the case to the Committee of Ministers, which closes its examination of the case.

Pursuant to Article 47, the Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

Interpretation of the Convention is an exclusive competence of the European Court of Human Rights. There are several approaches to the interpretation of the European Convention on Human Rights, those being:

- general approach;
- approach focused on the Convention's purpose and essence;
- dynamic or evolutionary interpretation;
- interpretation that relies on European national standards;
- interpretation through the principle of proportionality;
- interpretation assisted by the freedom of decision-making;
- interpretation that relies on references to international standards;
- fourth-instance doctrine;
- effective interpretation;
- consistent interpretation of the Convention as a whole;
- interpretation through limitations originating from the text;
- interpretation through autonomous meanings of the words used in the Convention;
- interpretation that relies on TRAVAUX PREPARATOIRES (preparatory work);
- interpretation through the Court's interpretation role.

According to Article 46 of the Convention, as amended by Protocol No. 11, the Committee of Ministers supervises the execution of judgments of the European Court of Human Rights. This work is carried out mainly at four regular meetings (DH meetings) organized every year. Documents for these meetings take the form of Annotated Order of Business. The content of this document is made public, as are, in general, the decisions taken in each case. The Committee of Ministers' essential function is to ensure that member states comply with the judgments and certain decisions of the European Court of Human Rights. The Committee completes each case by adopting a final resolution. In some cases, interim resolutions may be appropriate. Both kinds of resolutions are public.

Rules of the Committee of Ministers for supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006) define the Committee's operations. Thus, for instance, Rule 4 thereof reads that the Committee of Ministers gives priority to supervision of execution of judgments in which the Court has identified a systemic problem. Nevertheless, the priority should not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

These rules define the manners in which the Committee of Ministers receives information on the execution of judgments. According to Rule 6, when the Court has decided that there has been a violation of the Convention or its Protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee invites the High Contracting Party concerned to inform it of the measures the latter has taken or intends to take in regard to implementing a particular judgment.

When supervising execution of judgments, the Committee of Ministers examines whether any just satisfaction awarded by the Court has been paid (including default interest). Moreover, taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, the Committee of Ministers examines whether individual measures have been taken to ensure that the violation has ceased, and whether general measures have been adopted with a view to preventing new violations similar to that or those found, or with a view to put an end to continuing violations.

The High Contracting Party must provide information on the judgment's implementation, and until it complies with this obligation the case is placed on the agenda of each human rights meeting of the

Committee of Ministers. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in position to implement the general measures necessary to ensure compliance with the judgment, the case is placed again on the agenda of the Committee of Ministers' meeting scheduled to take place six months later, unless the Committee decides otherwise.

The Committee of Ministers is obliged to reconsider any communication from the injured party related to the payment of just satisfaction or implementation of individual measures. Also, the Committee of Ministers is entitled to reconsider any communication from non-governmental organisations, as well as national institutions working on promotion and protection of human rights, and related to execution of judgments pursuant to Article 46, paragraph 2 of the Convention.

According to Article 46, paragraph 3 of the Convention, if the Committee of Ministers considers that the supervision of execution of a final judgment is hindered by a problem related to judgment's interpretation, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision is adopted by means of two-thirds majority vote from the total number of representatives entitled to sit in the Committee.

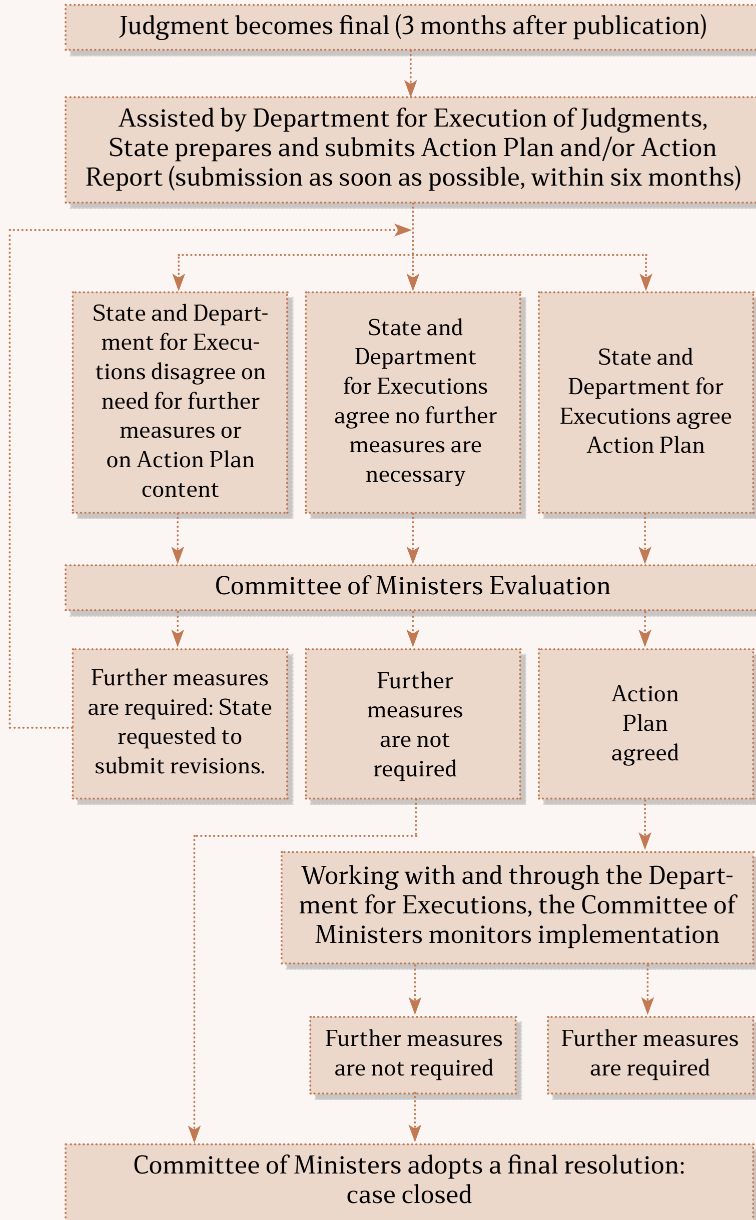
The referral decision may also take the form of an interim resolution. This is pursued due to the possibility of different views within the Committee of Ministers.

During supervision of execution of a judgment or the terms of a friendly settlement, the Committee of Ministers may adopt an Interim Resolution, primarily for the purpose of providing information on progress made in terms of judgment's execution or, where appropriate, for the purpose of expressing concern and/or making suggestions with respect to the execution.

And finally, after having established that the High Contracting Party concerned has taken all the necessary measures needed to abide by the judgment or that the terms of the friendly settlement have been fulfilled, the Committee of Ministers adopts a resolution whereby it concludes that the judgment is implemented.

ANNEX 4

Schematic Overview of Execution of ECtHR Judgements[3]



3 Diagram taken from: https://ecthrproject.files.wordpress.com/2011/07/monitoringhandbook_calibruch1.pdf

ANNEX 5

Example of a Resolution on Complete Execution of ECtHR Judgment

Resolution CM/ResDH(2011)81[4]
Execution of judgments taken by the European Court of Human Rights in the cases of Dumanovski, Docevski & Blage Ilievski v. the Republic of Macedonia

(applications no. 13898/02, 66907/01 and 39538/03, judgments of 08/12/2005, final on 03/07/2006, of 01/03/2007, final on 01/06/2007 and of 25/06/2009, final on 25/09/2009)

The Committee of Ministers, under the terms of Article 46, paragraph 2 of the Convention for Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter "the Convention" and "the Court");

Having regard to the judgments transmitted by the Court to the Committee once they had become final;

Recalling that the violations of the Convention found by the Court in these cases concern the excessive length of proceedings concerning civil rights and obligations before administrative bodies (violations of Article 6, paragraph 1) (see details in Appendix);

Having invited the government of the respondent state to inform the Committee of the measures taken to comply with its obligation under Article 46, paragraph 1 of the Convention to abide by the judgments;

Having examined the information provided by the government in accordance with the Committee's Rules for the application of Article 46, paragraph 2 of the Convention;

Having satisfied itself that, within the time-limit set, the respondent state paid the applicant the just satisfaction provided only in the judgment in the case of Docevski (see details in Appendix),

4 *Adopted by the Committee of Ministers on 8 June 2011 at the 1115th Meeting of the Ministers' Deputies*

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded in the judgments, the adoption by the respondent state, where appropriate, of

- individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- general measures preventing similar violations;

DECLARES, having examined the measures taken by the respondent state (see Appendix), that it has exercised its functions under Article 46, paragraph 2 of the Convention in these cases and

DECIDES to close the examination of these cases;

Appendix to Resolution CM/ResDH(2011)81

Information on measures taken to comply with the judgments in the cases of

Dumanovski, Docevski & Blage Ilievski against the Republic of Macedonia

Introductory case summary

These cases concern the excessive length of proceedings mainly before administrative bodies, such as the Kumanovo Employment Bureau and the Ministry of Labour and Social Policy, the Pension and Disability Insurance Fund and its Second-Instance Commission and the Government Appeal Commission, relating to various social security benefits due to the applicants. Each applicant instituted administrative proceedings on several occasions before the Supreme Court either as a result of the inactivity of these administrative bodies or to challenge their decisions. Proceedings lasted from 1995 to 2001 in the Dumanovski case, from 1996 to 2005 in the Docevski case and from 1996 to 2004 in the Blage Ilievski case.

The Court found that substantial delays were attributable to the authorities and caused mainly by the re-examination of the cases or inactivity of the administrative bodies.

The Court in particular noted that special diligence was required where the applicant had lost his or her means of subsistence after being dismissed from employment (in the case of Dumanovski) as well as in pension disputes (in the cases of Docevski and Blage Ilievski) (violations of Article 6, paragraph 1).

I. Payments of just satisfaction and individual measures

a) Details of just satisfaction

Name and application number	Non-pecuniary damage	Costs and expenses	Total
Dumanovski 13898/02	-	-	-
Docevski 66907/01	3,600 EUR	600 EUR	4,200 EUR Paid on 31/08/2007
Blage Ilievski 39538/03	-	-	-

b) Individual measures

All domestic proceedings have been concluded. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

II. General measures

The authorities of the respondent state have taken a number of measures to reduce the excessive length of proceedings before administrative bodies and domestic courts.

a) *Legislative measures*: In order to reduce the excessive length of administrative proceedings before the domestic courts the new Law on Courts and the new Law on General Administrative Procedure was adopted in 2006.

The new Law on Courts established a specialised Administrative Court as from December 2007. The Administrative Court now has jurisdiction to resolve administrative disputes which were previously decided by the Supreme Court.

According to the provisions of the new Law on General Administrative Procedure, the Administrative Court is now authorised to decide on the merits in certain cases following the annulment of an administrative

decision. In this context, the law prevents multiple re-examination of cases such as the present ones and thus reduces the excessive length of administrative proceedings before domestic courts.

To prevent inactivity by administrative bodies in administrative proceedings, Amendments to the new Law on General Administrative Procedure were adopted in 2008. They introduced a number of novelties with a view to accelerating administrative proceedings.

In particular, any request made to the administration will be considered to have been accepted, if the administration fails to respond to that request within a certain deadline (the concept of "tacit authorisation").

Deadlines in administrative proceedings have also been considerably shortened. The rules on serving documents have been simplified. The deadline for service of documents has been reduced from 15 to 7 days. Parties to administrative proceedings shall be served with any relevant document only once. In case of service by registered letter, if such letter is not received by the addressee, the post office will leave a notice on his or her residence door or in the registered address of the corporate addressee, as the case may be. By such a notice the addressee shall be invited to collect any documents within 7 days. Should the addressee fail to comply, it will be considered that the service has been duly performed. The service of documents in electronic form has also been introduced. Furthermore, the second-instance authority shall make a decision on the merits under certain circumstances, for example in situations when a matter had already been referred back once for re-examination to a first-instance authority. Finally, pursuant to these amendments, the administrative authorities shall have an obligation to keep administrative statistics and to submit periodic reports to the Ministry of Justice in this respect.

b) *Efficiency of the Administrative Court:* As of September 2008, the Administrative Court had accepted 3751 new cases. Throughout this period the Administrative Court resolved in aggregate 3375 cases and managed to dispose of 70% of the incoming cases. In 2008, the number of judges at the Administrative Court has been raised from 19 to 26. In addition, the Administrative Court recruited a number of additional court clerks with a view to shortening the length of proceedings before that court.

c) *Awareness-raising campaign*: A number of events have been organised to inform the administrative authorities of the legislative amendments introduced. In October 2008 a wide media campaign was carried out to raise awareness of the amendments, including the rights of individuals in cases of excessive length of administrative proceedings.

d) *Publication and dissemination*: The Court's judgments have been translated and published on the website of the Ministry of Justice (www.pravda.gov.mk). In the case of Dumanovski, the judgment was also forwarded to the Supreme Court.

III. Conclusions of the respondent state

The government considers that the measures adopted have fully remedied the consequences for the applicants of the violations of the Convention found by the European Court in this case, that these measures will prevent similar violations and that the Republic of Macedonia has thus complied with its obligations under Article 46, paragraph 1 of the Convention.

ANNEX 6

Payments of Redress Awarded by ECtHR or Payments Pursuant to Friendly Settlement or Unilateral Declaration

	Case	Damages have been awarded on the basis of	Pecuniary damages	Non-pecuniary damages	Costs and expenses	Total per year
1	Settlement	Friendly Settlement	€ 77,000.00	€ -	€ -	
2	Violation of Articles 6 and 13 of the Convention	Judgment	€ -	€ 1,600.00	€ 1,500.00	
3	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,000.00	€ -	
4	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ 500.00	€ -	€ -	
5	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,000.00	€ -	
6	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,600.00	€ 600.00	
7	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 500.00	€ 200.00	
8	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 4,000.00	€ -	
						€ 91,500.00

9	Violation of Article 6 of the Convention	Judgment	€ -	€ 3,600.00	€ 600.00	
10	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ -	€ 600.00	
11	Violation of Article 3 of the Convention	Judgment	€ -	€ 3,000.00	€ 9,148.00	
12	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,600.00	€ -	
13	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ -	€ 600.00	
14	Violation of Article 6 of the Convention	Judgment	€ -	€ 500.00	€ -	
15	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 500.00	€ -	
16	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,600.00	€ -	
17	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,500.00	€ -	
18	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,000.00	€ -	
19	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ -	€ 248.00	
20	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,300.00	€ -	

21	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,400.00	€ -	
22	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,070.00	€ -	
23	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,000.00	€ 500.00	
						€ 31,766.00
24	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 4,000.00	€ -	
25	Violation of Article 3 of the Convention	Judgment	€ -	€ 1,000.00	€ 645.00	
26	Violation of Article 3 of the Convention	Judgment	€ -	€ 15,000.00	€ 2,000.00	
27	Violation of Article 3 of the Convention	Judgment	€ -	€ 3,000.00	€ 1,000.00	
28	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,000.00	€ -	
29	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 4,440.00	€ -	
30	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,000.00	€ -	
31	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,000.00	€ -	

32	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 800.00	€ -	
33	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,200.00	€ -	
34	Violation of Article 6, paragraph 1 of the Convention and violation of Article 13 of the Convention	Judgment	€ -	€ 5,300.00	€ -	
35	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 600.00	€ 200.00	
		Friendly Settlements	€ 105,800.00	€ -	€ -	
		Unilateral Declarations	€ 21,700.00			
						€ 172,685.00
36	Violation of Article 11 of the Convention	Judgment	€ -	€ 5,000.00	€ 4,000.00	
37	Violation of Article 6, paragraph 1 of the Convention and violation of Article 1 of Protocol No. 1	Judgment	€ -	€ 1,600.00	€ 1,000.00	
38	Violation of Article 5, paragraph 1 (e) of the Convention	Judgment	€ -	€ 1,540.00	€ 850.00	
39	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 10,000.00	€ -	
40	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,200.00	€ 600.00	

41	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 3,200.00	€ 600.00	
42	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 3,200.00	€ -	
43	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 600.00	€ -	
44	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 600.00	€ -	
45	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,600.00	€ -	
46	Violation of Articles 5 and 1(c) and Article 2 of the Convention and violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,000.00	€ 180.00	
		Friendly Settlements	€ 73,780.00			
		Unilateral declarations	€ 8,246.00			
						€ 119,796.00
47	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 500.00	€ -	
48	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,600.00	€ -	
49	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 800.00	€ 10.00	

50	Violation of Article 5, paragraph 4 of the Convention	Judgment	€ -	€ 765.00	€ -	
51	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 800.00	€ 60.00	
52	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,200.00	€ -	
53	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,600.00	€ 600.00	
54	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 6,000.00	€ 2,500.00	
55	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ -	€ 1,000.00	
56	Violation of Article 5, paragraph 3 of the Convention	Judgment	€ -	€ -	€ 2,000.00	
57	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 1,600.00	€ 250.00	
58	Settlement	Settlement	€ -	€ -	€ 7,000.00	
		Friendly Settlement	€ 570,582.00	€ -	€ -	
		Unilateral Declarations	€ 38,218.00	€ -	€ -	
						€ 638,085.00

59	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 3,000.00	€ -	
60	Violation of Article 6, paragraphs 1 and 3(d) of the Convention	Judgment	€ -	€ 3,200.00	€ -	
61	Violation of Article 6 of the Convention	Judgment	€ -	€ 1,200.00	€ -	
62	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 600.00	€ -	
63	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,400.00	€ 1,464.00	
		Friendly Settlement	€ 150,570.00	€ -	€ -	
		Unilateral Declarations	€ 34,663.00	€ -	€ -	
						€ 197,097.00
64	Violation of Article 3 of the Convention	Judgment	€ -	€ 5,000.00	€ 1,400.00	
65	Violation of Article 2 of the Convention	Judgment	€ 3,900.00	€ 12,000.00	€ -	
66	Violation of Articles 6 and 3 of the Convention	Judgment	€ -	€ -	€ 530.00	
67	Violation of Articles 6 and 13 of the Convention	Judgment	€ -	€ 5,400.00	€ 1,080.00	

68	Violation of Articles 3, 5, 8 and 13 of the Convention	Judgment	€ -	€ 60,000.00	€ -	
69	Violation of Article 6, paragraph 1 of the Convention	Judgment	€ -	€ 2,500.00	€ 120.00	
						€ 91,930.00
TOTAL FOR ALL YEARS: 1,342,859.00 EUR						