



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Second periodic reports of States parties due in 1999**

**Addendum\***

**THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

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\* For the initial report, see CAT/C/28/Add.4; for its consideration, see CAT/C/SR.366, 369 and 373 and *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), paras. 106-117.

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## **I. INTRODUCTION**

1. The former Yugoslav Republic of Macedonia is submitting the combined second and third periodic reports on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in accordance with obligations arising from article 19, paragraph 1, of the said Convention.
2. The present report contains the information on legal, administrative and other measures ensuring the rights guaranteed by the Convention in the period following the submission of the initial report of The former Yugoslav Republic of Macedonia (CAT/C/28/Add.4).
3. The present report has been drawn, to the extent possible, in accordance with the General Guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14/Rev.1).

## **II. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION**

### **Article 1**

4. In the process of approximation of criminal legislation with European Union standards, which will be dealt with in detail under article 2, a special emphasis was placed on the implementation of the Committee against Torture recommendations. With the amendments to the Criminal Code passed in March 2004, a fundamental change was made, inter alia, in the title and substance of the incrimination contained in article 142.
5. The amendments effectively cover acts as defined in the provisions of article 1, paragraph 1, and article 2, paragraph 3, of the Convention against Torture.
6. In this regard, article 142 reads as follows:
  - (a) A person who while performing his duty, as well as a person instructed by an official person or based on an agreement of the official person, shall apply force, threat or some other unlawful instrument or an unlawful manner with the intention to force a confession or some other statement from a defendant, a witness, an expert witness or from another person, or will inflict on another person severe bodily or mental suffering, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her to forfeit some of his/her rights, or shall cause such suffering due to any form of discrimination, shall be punished with imprisonment of one to five years;
  - (b) If, due to the acts stipulated in paragraph 1, the damaged party has suffered severe bodily harm or other especially severe consequences, the perpetrator shall be punished with imprisonment of 1 to 10 years.
7. An important segment of the criminal legislation reform is criminalization of family violence. According to article 122, paragraph 19, of the Criminal Code: "Family violence shall mean abuse, rude insults, threatening of the safety, inflicting physical injuries, sexual or other physical and psychological violence which causes a feeling of insecurity, being threatened, or

fear of a spouse, parents or children or other persons which live in a marital or other community or joint household, as well as of a former spouse or persons which have a common child or have close personal relations.”

8. Acts of crimes linked to family violence are incorporated in the following criminal offences: article 123 - Murder; article 125 - “Momentary” murder; article 130 - Bodily injury; article 131 - Serious bodily injury; article 139 - Coercion; article 140 - Illegal deprivation of freedom; article 144 - Endangering of security; article 191 - Mediation in prostitution; and article 188 - Sexual assault on a child.

## **Article 2**

9. The following changes have been made on the constitutional level compared to what was presented in the initial report.

10. In 1998, the Assembly of the Republic of Macedonia adopted a decision on proclamation of Amendment III to the Constitution amending paragraph 5 of article 12 of the Constitution.

11. According to Amendment III: “Detention until the indictment may last up to 180 days since the day the detention started, on the basis of a court decision. After the indictment act has been submitted, detention shall be extended or determined by the competent court in a procedure determined by law.”

12. On a substantive legal level, the Republic has over the past period carried out criminal legislation reform in order to complete a consistent and efficient legal framework as an essential precondition for the effectuation of ratified international instruments and recommendations of relevant United Nations and Council of Europe committees.

13. In parallel with these activities, in November 2004 the Government adopted the Strategy for Judicial System Reform. The general objective of the Strategy is to build a functional and efficient judicial system based on legal standards of the European Union.

14. The judicial system reform covers substantive law reforms, procedural law reforms and structural reforms. The structural reform includes the relations among various institutions of the justice system, as well as their internal organization and powers.

15. Procedural law level: The above-mentioned constitutional provision has been transposed in full in article 204, paragraph 4, of the Law on Criminal Procedure. “The total duration of pretrial detention, including the time of duration of deprivation of freedom before the decision on the detention has been made, shall not exceed 180 days. With the expiry of this time, the detainee shall be released.”

16. According to article 12 of the Constitution of the Republic of Macedonia freedom of man is inviolable. No one may be restricted freedom, except by a court decision and in cases and in a procedure determined by law.

17. Until the indictment act, detention based on a court decision may last at most 180 days since the day of deprivation of freedom. After the indictment act has been submitted, detention is extended or determined by the competent court in a procedure determined by law.

18. According to article 1, paragraph 2, of the Law on Criminal Procedure, before pronouncing a final legally valid verdict, the rights and freedoms of the accused and of other persons may be limited only to an extent necessary and under conditions proscribed by this Law.

19. Detention is one of the measures that may be applied against the accused in order to secure his/her presence and successful conduct of criminal proceedings.

20. The Law on Criminal Procedure (art. 183) prescribes that pretrial detention may be determined only under conditions foreseen in the Law. The duration of pretrial detention must be set to the shortest time necessary. It is a duty of all agencies participating in the criminal procedure and agencies providing judicial assistance to act in the most urgent manner if the accused is detained. Detention will be withdrawn at any stage of the procedure as soon as the reasons on which basis it was determined cease to exist.

21. According to article 184, detention may be determined if there is a grounded suspicion that a person has committed a criminal act or if:

(a) The person is hiding, the identity cannot be determined or there are other circumstances indicating the danger of escape;

(b) There is justified fear that he/she will destroy the evidence of the crime or certain circumstances indicate that he/she will obstruct investigation by influencing witnesses, accomplices or conceivers;

(c) Specific circumstances justify the fear that he/she will commit crime again, or he/she will complete the attempted crime or will commit crime with which he/she threatens.

22. Detention is obligatory when there is a reasonable doubt that the person has committed a crime for which a life sentence is foreseen.

23. Detention is ordered by the investigating judge. The detainee may appeal to the court chamber against the decision for pretrial detention within 24 hours from the time of delivery of the decision. If the detainee is interrogated for the first time after the expiring of this period, he/she may appeal at the interrogation. The appeal with a copy of the minutes for interrogation, if the detained has been interrogated, and the decision for pretrial detention, are submitted to the Chamber immediately. The appeal does not delay execution of the decision. The Chamber which decides on the appeal is obliged to deliver a decision within 48 hours.

24. Pretrial detention based on the decision of the investigating judge or detention determined by a decision of the chamber during investigation (chamber of three judges), may not last more than 30 days from the day of arrest. Any deprivation of freedom is counted as part of the detention period. During investigation, the chamber may decide to extend detention for at most 60 days. In the event of a crime for which a sentence of at least five years is foreseen, following the 60-day period, the chamber of the directly higher court may extend it up to 90 days at most. The overall duration of pretrial detention may not exceed 180 days. With the expiry of that period, the detainee must be released immediately. During investigation, the investigating judge may cancel detention (arts. 189 and 190).

25. Following the filing of the indictment act until the completion of the main hearing, detention may be prescribed, extended or cancelled only by a decision of the chamber, *ex officio* or at the request of the competent prosecutor. The detention prescribed in this manner may last up to one year at most (for crimes for which the prison sentence of 15 years may be delivered) and two years at most (for crimes for which a life sentence may be delivered). The chamber deciding on detention is obliged even without proposal by the parties, upon expiry of 30 days after legal effectiveness of the last detention decision, to review whether the reasons for detention still persist and to make a decision on cancellation or extension of detention. If the accused escapes detention, the prescribed periods start over again (art. 191).

26. Before the indictment act filed in shortened procedure, the detention may last only for as long as it is necessary for the investigating acts to be conducted, but no longer than eight days. From the filing of the indictment act until the main hearing, the detention may last up to 60 days at most (art. 419).

27. Treatment of detainees is regulated in the Law on Criminal Procedure. The main principle is that execution of detention measure may not hurt personality and dignity of the accused and that only restrictions necessary for preventing escape or a deal that may harm successful conduct of the proceedings may be applied. The position of detainees is regulated in detail in a number of provisions of the Law which provide for the rights of detainees. Detainees have the right to 8-hour uninterrupted rest within 24 hours, as well as the right to stay in open air at least 2 hours a day. These rights are unconditional. In addition, detainees may provide food at their expense, wear their clothes and use their bed linen, and may buy books, newspapers and other items to meet their regular needs, but only if these actions do not interfere with the successful conduct of the proceedings, which is decided by the investigating authority.

28. On the approval of the investigating judge who conducts the investigation and under his/her supervision, within the limits of the order in the institution, the detainee may be visited by his close relatives, and on his/her request, physicians and other persons. Certain visits may be forbidden if they might badly influence the conduct of the proceedings. The detainee may correspond with persons out of the prison with the knowledge and under supervision of the body conducting the investigation. This body may forbid the sending and receiving of letters and other parcels which are harmful for the conduct of the proceedings. Sending applications, pleas and appeals can never be forbidden.

29. Heads of the diplomatic and consular missions in the Republic, on the approval of the investigating judge conducting the investigation, have a right to visit and to talk to a detainee who is a citizen of their country. The approval for the visit will be requested from the Ministry of Justice. Delegations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and representatives of the International Red Cross may visit detainees upon approval of the investigating judge. The investigating judge is obliged to approve visits and interviews by the CPT with detainees. These visits are carried out without supervision.

30. In the event of disciplinary offences of the detainee, the investigating judge, i.e. the Chairman of the Chamber, may pronounce disciplinary punishment-restriction on visits. This restriction may not relate to the communication between the detainee and the counsel. Detainees may lodge an appeal before the Chamber against the decision for the disciplinary punishment prescribed (arts. 193-196).

31. Article 197 of the Law on Criminal Procedure regulates matters of supervision of detainees. The supervision is performed by the president of the competent court or a judge appointed by him/her, excluding the investigating judge. According to the law, they have the obligation to visit detainees at least once a week and, if necessary, to be informed, without the presence of the supervisor and the guards, how detainees are fed, how they are provided with other necessities and how they are treated. If irregularities are observed, the Chairman or the appointed judge is obliged to undertake necessary measures to eliminate irregularities. A public prosecutor may attend these visits.

32. As regards the disciplinary accountability of the security service and prison guards in general, the Law on Execution of Sanctions (Official Gazette of the Republic of Macedonia Nos. 3/97, 23/99 and 74/04) refers to general labour relations regulations, i.e. Labour Relations Law and Law on Administration Organs (arts. 205 to 212), which foresee disciplinary accountability of an employee in the event of breaches of working obligations and other violations of working discipline in cases where he/she is accountable, in particular in cases of negligent and irregular performance of entrusted tasks, disregard for laws and other regulations and code of conduct at work or linked with work.

33. Cases of alleged unprofessional conduct of police officers are investigated by the Sector for Professional Standards (Ministry of Internal Affairs). Acts in contravention of the set procedures imply disciplinary and/or criminal liability of police officers.

34. The reform of procedural legislation encompassing the basic tools for realization of functions of judicial institutions is aimed at securing prompt access to justice and prompt and simple enjoyment of rights and interests of citizens and legal entities, as well as efficient protection from crime and procedural guarantees for the protection of human rights in the mechanisms of the judicial system. Two direct effects of the reform are expected to be the increased efficiency of judicial institutions and a decreased backlog of cases.

35. The structural reform covering institutions in the judicial system is aimed at redefining the position and powers of specific organs, for the purpose of establishing efficient, stable, depoliticized, independent and responsible institutions, as well as the relation within them, based on professionalism, competence, ethics and protection from abuse and corruption. Special attention in this regard is devoted to strengthening the independence of courts and of the public prosecution, in particular from the other two powers, via the redefinition of the status of judges and public prosecutors, including the procedure for their selection and appointment, dismissal and promotion, and the system of remuneration.

36. Activities aimed at amending the Constitution of the Republic of Macedonia for the purpose of carrying out the goals of the Strategy are under way.

### Execution of criminal sanctions

37. Prisons in the country accommodate 3 to 5 inmates in one room on the average, with the exception of the two wards in the closed department of the Idrizovo Penitentiary, where 20 inmates are accommodated. Rooms in the two wards are spacious and meet the standard of 9 m<sup>3</sup> per inmate. Rehabilitation works on one of the wards are under way and the rooms will be separated. The third ward of this prison, which has been renovated, accommodates 2 to 3 inmates per room.

38. In view of the 9 m<sup>3</sup> standard per inmate, the following prisons are overcrowded: Skopje Prison (semi-open institution), where 56 inmates exceeding the normal capacity are accommodated, including 43 convicts, 10 misdemeanour-sentenced and 3 detainees; and the Tetovo Prison (semi-open institution), where there are 13 inmates over the regular capacity, including 3 convicts, 9 detainees and 1 on misdemeanour sentence. All in all, there are 69 inmates over the prison capacity in the country. The Tetovo Prison is being expanded at present. Although the mentioned prisons are overcrowded, each inmate has his own bed, linen and cupboard, while overcrowdedness relates to less cubic metres than prescribed, that is to say less than 9 m<sup>3</sup> per inmate. Other semi-open and open institutions, as well as the closed institution in the Republic of Macedonia are not overcrowded and there is more space than the standard of 9 m<sup>3</sup> because there are fewer inmates than it is possible to accommodate.

#### Institutions' capacity and the numbers of convicted, detained and punished for misdemeanour inmates in penitentiaries in the Republic

	PI - CI	Capacity		Situation as of 30 September 2004		
		For sentenced persons	For detained persons	Sentenced	Detained	Imprisoned for misdemeanour*
1	2	3	4	5	6	7
1.	Penitentiary Idrizovo	1 836		1 108		
1.a	Open Ward Veles	82		15		9
2.	Penitentiary of open type Struga	84		31		
3.	Prison Skopje	127	120	170	123	10
3.a	Open Ward K. Palanka	35		2		3
4.	Prison Bitola	67	22	30	21	7
4.a	Open Ward Prilep	105		9		10
5.	Prison Stip	126	32	51	10	19
5.a	Open Ward Strumica	45		22		20
6.	Prison Tetovo	33	20	36	29	1
7.	Prison Gevgelija	48	14	27	14	7
8.	Prison Ohrid	25	20	20	10	
	Total	2 613	228	1 521	207	86
9.	Correctional Institution Tetovo	25		22		

Source: Ministry of Justice (Directorate for Execution of Sanctions).

\* Imprisoned for Misdemeanour. Under the Law on Misdemeanours (Official Gazette of the Republic of Macedonia No. 15/1997) imprisonment may not be less than 5 and exceed 90 days.



39. There is a women's ward in the framework of the Idrizovo penitentiary. Women sentenced to prison are accommodated there. Within the same ward, but physically separated from adult women inmates, juveniles of female gender sentenced to prison are accommodated.
40. In addition to the mentioned categories, in the framework of this ward there is a separate department for correctional measures for minors.
41. One should note that the number of female minors is very small. At present there is only one inmate. At times there are none.
42. Special attention is paid to pregnant inmates and inmates who have given birth, who are provided medical assistance. These categories of inmates are provided food of the kind and in quantities determined by the physician. At the proposal of the physician, pregnant inmates are sent, as a rule, to the delivery ward six weeks before the baby is born, but they can be sent earlier if suggested by the physician. Pregnant inmates give birth in specialized health institutions. They stay in the delivery ward until the baby is 1 year old unless dismissed earlier from prison. All costs of food, care and health protection for the baby are borne by the prison. Once the child reaches the age of 1 year old, the social care centre undertakes all activities for accommodation of the child. Registry of births must not contain information that the child was born in prison. General rules regarding absence of leave from work are applied to women inmates during pregnancy, childbirth and maternity.
43. As regards all other matters, female inmates have the same rights and duties as male inmates.
44. According to the legislation of the Republic, juveniles may be sentenced to juvenile prison that may last up to a maximum of 10 years. Male inmates serve their juvenile sentence in a separate institution.
45. Juveniles may be pronounced correctional measures and sent to a correctional institution. The correctional measure may last from one to five years. Male persons serve this correctional measure in a separate institution.
46. When admitted, an expert team composed of a psychologist, an educator and a social worker, and if need be other professionals, works with them. With the application of scientific methods, the team makes a social, medical and psychological-pedagogical examination of the person, and afterwards an individual programme is designed. Correctional methods are developed, combining work and education and workshops for practical training. Measures to improve the process of rehabilitation are proposed. On the basis of the results of the examination of the personality, the classification is made and the correctional-educational programme for active participation of the individual during the time spent in the institution is designed. Personality problems are detected in order that they can be eliminated through individual work with that person. In line with the needs for their rehabilitation, inmates are involved in activities according to their physical and psychological abilities and the opportunities provided by the institution. The preference of the inmate is taken into consideration when the kind of work to be performed is being determined. Persons who acquire certain qualifications while in prison are given certificates which may not indicate that the qualification has been obtained in prison.

47. Inmates are provided medical check-ups at least once a year. They are provided opportunities for cultural, entertainment and sports activities in their spare time. Inmates are regularly visited by representatives from centres for social work. They are provided frequent visits by family members and close friends.

48. The disciplinary penalty of solitary confinement may last from 3 to 7 days in case of juveniles sentenced to correctional measure and up to 10 days for juveniles sentenced to juvenile imprisonment.

49. Juvenile inmates are provided food, which must contain at least 14,600 joules daily. At least two hours in the open air per day must be provided.

50. Juvenile inmates enjoy the same rights and obligations in respect of all other matters as other inmates.

51. As regards whether steps are being taken to investigate cases and allegations of mistreatment of inmates, the following should be underlined. Against the background of the constitutional postulate that no one shall be restricted freedom except by a court decision and in cases and in procedure defined by law (art. 12) and with the incorporation of standards contained in the international instruments, Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules in the Law on the Execution of Sanctions (Official Gazette of the Republic of Macedonia Nos. 03/97, 23/99 and 74/04), the persons, against whom sanctions are being applied are treated humanely, by respecting their personality and dignity, for the purpose of protecting their psycho-physical and moral integrity. Any form of torture, inhuman or degrading treatment or punishment is prohibited.

52. Article 184, paragraph 1, and article 185 of the Law on the Execution of Sanctions regulate the use of means of coercion and of firearms. The use of any means of coercion or firearms shall be reported to the Directorate for Execution of Sanctions, which appraises whether the use of such means was justified. If the use of such means has been unlawful, a penalty procedure, whether disciplinary or other, depending on the level of overstepping authority, is initiated against the official person who used or ordered the use of such actions.

53. According to articles 163-167 of the Law on the Execution of Sanctions, the convicts are entitled, in order to protect their rights, to submit legal remedies, petitions and other requests to the competent organs and to receive answers from them. The convict is entitled to oral or written complaint to the director of the institution, who is obliged to examine the complaint and make a decision on it within 15 days. The convict is entitled to file a complaint against the decision of the director of the institution or in the event he/she does not respond, with the Directorate for Execution of Sanctions, whose decision is final, but the convict still has the right to court protection.

54. The Ombudsman of the Republic is following the situation with the respect and the protection of constitutionally guaranteed rights of the apprehended, detained and convicted persons, who are entitled to file complaints with this institution. The Ombudsman may visit and inspect prisons without announcement or approval and talk to persons deprived of liberty without supervision of official persons (art. 31 of the Law on Ombudsman).

55. An integral part of the Strategy is also the reform of the penitentiary system. As part of the reform activities a new Law on the Execution of Sanctions will be adopted. The Law will provide for:

- (a) Conditions for further advancement of the execution of sanctions in accordance with international instruments relevant to the penitentiary system;
- (b) Introduction of probation system, in accordance with international standards;
- (c) Implementation of the system of alternative sanctions introduced in the Criminal Code, by defining the way of their execution;
- (d) Establishment of the Centre for Training of the Staff of penitentiary institutions.

56. Within the framework of the penitentiary system reform, in 2005 the activities aimed at improving the accommodation capacity and modernization of execution of sanctions and conditions of work in penitentiary institutions in accordance with the programme approved by the Government have been carried out.

#### **Other laws and regulations for the prevention of torture and other degrading treatment or punishment**

57. The protection from arbitrary arrest, and in particular prevention of arbitrary deprivation of life as a result of the use of force in the performance of official duties by police officers and security forces, is guaranteed in the legislation of the Republic with the prescription of conditions for the use of firearms.

58. Article 7 of the Law on Internal Affairs (Official Gazette of the Republic of Macedonia No. 19/95, 55/97, 38/02, 33/03 and 19/04) stipulates that employees of the Ministry shall be obliged to protect and preserve the life and property of citizens when performing their tasks and duties, as well as respect human rights and freedoms of citizens and to apply, in a regulated manner, only the measures and means of coercion determined by this law or another regulation.

59. The Law is strict in prescribing the conditions under which an authorized officer of the Ministry of Internal Affairs may use firearms.

60. According to article 35 of the Law, an authorized officer may use firearms if by using other means of coercion he/she cannot: (a) protect the life of the citizens; (b) reject direct life-threatening attack on himself/herself; (c) reject attack on a building or person secured; (d) prevent the escape of a person caught in the act of committing a crime for which the sentence of at least five years' imprisonment is prescribed, as well as to prevent the escape of a detained person or a person for whom an arrest warrant has been issued for committing such a crime.

61. Article 36 foresees that an authorized officer who officially performs duties directly under his/her superior may use means of coercion or firearms only if ordered by him/her. Prior to the use of force or firearms an authorized officer shall be obliged to warn, in a loud voice, the person for whom he/she shall use means or coercion or firearms (art. 37). According to article 38 of the Law on Internal Affairs for each specific case, the responsible officer shall directly assess the grounds and justification for the use of force or firearms.

62. If the means of coercion or firearms are used within authorized limits and in compliance with the provisions of articles 34, 35 and 36 of this Law, the responsibility of the authorized official person who used them shall be excluded as well as the responsibility of the person in charge who ordered use of force and firearms, including the person who, upon the call of the Ministry or the authorized official person extended assistance in the execution of official actions (art. 39).

63. The means of coercion, the manner of their use and the use of firearms in cases determined by law by authorized officers of the Ministry of Internal Affairs are regulated in the Decree on the Use of Means of Coercion and Firearms (Official Gazette of the Republic of Macedonia No. 22/98 and 17/04) adopted by the Government. In addition to firearms, other means of coercion within the meaning of this Decree are: rubber truncheon, physical force, chemicals and gases (tear gas), water cannons, special vehicles, devices for forceful stoppage of vehicles, and dogs and horses in official use.

64. As part of the police reform process, the Ministry of Internal Affairs has drafted the text of the Law on Police. Its adoption is considered a high priority for the Ministry and is expected to be adopted in the first half of 2006.

65. Within the framework of police powers foreseen by the draft Law, the police may restrict the fundamental freedoms and rights of citizens only in cases determined by the Constitution, under conditions and in the procedure set by the law. In discharging police powers, the police officer is obliged to act humanely and to respect human rights and freedoms of citizens. According to this law, the police officer shall be authorized to use means of coercion, physical force, truncheon, instruments of restraint, devices for forceful stoppage of vehicles, official dogs, chemical materials, firearms against persons and groups, and special types of arms and explosives.

66. Coercion within the meaning of this law shall be considered the use of legitimate, appropriate and proportional physical or mechanical pressure, with the application of instruments and in the manner prescribed by law directed at an individual by the police officer only in the event the police work cannot be performed in any other manner. Means of coercion may be used to protect lives of people, overcome resistance to performing police work, prevention of escape and rejection of assault by giving a warning or order by the police officer, if the aim cannot be achieved in a different manner. The police officer shall always use means of coercion to achieve the set goal but with the minimum consequences. In the event that the conditions for the use of means of coercion have been fulfilled, the warning shall not be given to the persons against which these means are being applied if in such a case that would undermine the performance of police action.

67. A separate article of this law regulates use of means of coercion against individuals. According to this article, the police officer shall be authorized to use firearms when a police action cannot be carried out with the use of other means of coercion. The police officer shall be authorized to use firearms if he/she cannot in another way protect his/her life or lives of other persons, to prevent performance of crime for which the prison sentence of at least 4 years may be

prescribed; to prevent escape of an individual caught committing crime for which a prison sentence of 10 years or more serious punishment may be prescribed or of a person for whom a search warrant has been issued. Before use of firearms, the police officer shall give the oral order, "Stop. Police" followed by the second order, "Stop, or I will shoot". These orders shall not be given if it would undermine the police action.

68. The Law on Police will contain an article prescribing that the police officer is obliged to stop the application of means of coercion as soon as the reason for its use has ceased. When means of coercion are used within police powers, then the police officer who applied them as well as the police officer who ordered their application shall not be held accountable. A directly senior officer assesses whether the use of means of coercion in every specific case has been reasonably grounded, justified and correct. In cases of serious body injury or death of an individual, or if the means of coercion have been used against a group of persons, the competent organizational unit of the Ministry of Internal Affairs in charge of internal control and professional standards will assess whether the use of means of coercion has been reasonably grounded, justified and correct. This unit will review the circumstances in which the means of coercion have been applied and report on that, at the same time indicating whether the use of means of coercion has been reasonably grounded, justified and correct.

69. With the adoption of the Law on Police the above elaborated articles 35, 36, 37, 38 and 39 of the Law on Internal Affairs as well as the Decree on the Use of Means of Coercion and Firearms will be annulled.

70. In order to provide for the observance of basic principles and recommendations of the European Code of Police Ethics adopted by the Committee of Ministers of the Council of Europe, in 2004 the Minister of Internal Affairs brought the Code of Police Ethics (Official Gazette of the Republic of Macedonia No. 3/04). According to article 36 of the Code, the police force and its members are obliged to respect the right to life of each citizen in the realization of their duties. The police can use force only when it is necessary and to a degree necessary for achieving specific legitimate purpose. Members of the police will not use firearms, unless it is necessary and is in accordance with the law (art. 38).

71. According to article 45, members of the police, in performing their tasks, respect the fundamental rights of the citizens, such as: right to life, freedom of belief, conscience, thought and public expression of thought, freedom of speech, public appearance and other rights guaranteed by the Constitution.

72. According to article 37 of the Code, the police cannot incite, encourage or tolerate any form of torture, inhuman or humiliating treatment or punishment.

### **Preventive measures**

73. Prevention is an important segment of the general strategy of the Ministry of Internal Affairs. It is carried out through:

(a) The provision of access to records of persons in police custody, access to detention premises and to other premises in police stations by CPT;

(b) The provision of access to records of persons in police custody and to detention premises by the Ombudsman;

(c) The possibility of written or oral complaint to the Ombudsman and the Ministry of Internal Affairs by persons who consider that police officers carried out actions by which their dignity, right to life, and personal integrity were violated, that they were tortured and treated or punished inhumanely and in a humiliating manner;

(d) The keeping of detailed and precise records of all persons in police custody in all police stations;

(e) The obligation to prepare and submit written reports on the use of force and firearms to the directly senior officer, who assesses whether the use of force or firearms has been justified;

(f) The establishment of a commission, as an independent body in the Ministry of Internal Affairs, to review the circumstances in cases of serious body injury or death or if the force or firearms were used against a group of individuals;

(g) The creation and distribution of the plastic poster “Do you know your rights?”. It relates to persons brought into police custody. It advises citizens, in a transparent, written and illustrative manner, of their rights: (i) to be informed in the language they understand about the reasons for deprivation of freedom and of any charges against them; (ii) not to speak and not to testify against themselves or persons close to them; (iii) to seek counsel and to have an attorney present during interrogation; (iv) to inform their family or a person of their choice; (v) to be examined by the physician; and (vi) to be brought before a judge within a maximum of 24 hours;

(h) A special body, MINOR, was established, the main aim of which is to advance cooperation between the Ministry of Internal Affairs, the non-governmental sector and the Ombudsman, through transparency in actions of the officers of the Ministry of Internal Affairs, manifested in open discussions and actions on the complaints submitted by citizens to the Ombudsman and to non-governmental organizations (NGOs);

(i) The Public Relations department of the Ministry of Internal Affairs has been established, through which the Ministry maintains contacts with the media; furthermore through its web page, the Ministry is open to actions on all issues raised by citizens within the competence of the Ministry; appointment of Public Relations contact persons in all regional units of the Ministry of Internal Affairs; and

(j) Control, insight and supervision of the work of every police station by the senior managerial officers of the Ministry of Internal Affairs, with the emphasis on personal responsibility and accountability for entrusted powers.

74. According to the Law on the Ombudsman (Official Gazette of the Republic of Macedonia No. 60/03), the Ombudsman is an independent and autonomous organ which has powers to monitor the situation of the respect and protection of constitutional and legal rights of inmates in organs, organizations and institutions in which freedom of movement is restricted, in particular of apprehended and detained persons and persons serving prison sentences or

correctional measures in penitentiaries or correctional institutions (art. 31, paras. 1 and 2). Visits and inspections of the Ombudsman may be carried out at any time, without prior announcement or approval. The Ombudsman may conduct interviews with inmates in these organs, organizations or institutions without the presence of an official, as well as receive complaints by persons deprived of liberty in a sealed envelope and send replies without examination by official persons (art. 31, paras. 3 and 4).

75. In practice, the Ombudsman does not have any problems in exercising his/her functions.

76. The independent position of the Ombudsman is guaranteed by the manner of his/her appointment and dismissal by the Assembly of the Republic of Macedonia regulated in articles 5 to 10 of the Law on the Ombudsman, his/her professionalism, competence and accountability, as well as the means of funding of the Ombudsman institution foreseen in article 42, according to which the Assembly casts a separate vote on the item in the State budget intended for the Ombudsman office.

77. Furthermore, in conformity with the amendments to the Law on Criminal Procedure (art. 193, paras. 3 and 4, Official Gazette of the Republic of Macedonia No. 74/04), representatives of CPT and representatives of the International Committee of the Red Cross may visit detainees upon approval of the investigating judge. The investigating judge is obliged to approve CPT visits and interviews with detainees. These visits are carried out without supervision. Heads of the diplomatic and consular missions in the Republic, on the approval of the investigating judge conducting the investigation, have a right to visit and to talk to the detained citizen of their country.

78. As far as the disciplinary measures and sanctions for ill-treatment or torture by officers against inmates in organs, organizations and institutions in which freedom of movement is restricted, in the period from 1 January 2002 to 30 September 2004, the Ombudsman initiated four criminal charges against officers of the Ministry of Internal Affairs and one proposal for institution of disciplinary sanction.

79. In accordance with his own programme of work and legal powers, the Ombudsman visits these organs, organizations and institutions at least once a year, and reports to the Assembly on this issue in his annual reports.

80. Performing his functions of protecting constitutional and legal rights of citizens, based on his powers contained in article 32 of the Law on the Ombudsman, in the period from 1 January 2002 to 30 September 2004, the Ombudsman filed the proposal for institution of procedure to assess disciplinary responsibility for overstepping of authority by an official person to the Ministry of Internal Affairs. The Ombudsman has been informed that criminal charges were instituted against that person with the Public Prosecutor's Office. In the same period the Ombudsman filed four criminal charges against nine officers of the Ministry of Internal Affairs on reasonable doubts that they have committed the crime of torture under article 142, violence under article 386 and ill-treatment in the performance of official duty under article 143 of the Criminal Code. In the procedure that followed, one person was found guilty by Basic Court Skopje II; investigating procedure in the Basic Court Skopje I is under way in respect of

two persons; court proceedings before Kumanovo Basic Court are under way against five persons; one pretrial procedure conducted by the Prilep Basic Prosecutor's Office is under way against one person.

81. According to the data provided by the penitentiaries in the country and the correctional institution in Tetovo, the Directorate for Execution of Sanctions has provided information that there were no disciplinary proceedings instituted against the employees of these institutions due to violation of working obligations based on overstepping of authority in the form of inhuman and degrading treatment or torture in 2001, 2002 and 2003. In 2004 only one disciplinary procedure in the Idrizovo Penitentiary was instituted, involving three employees of the security service, and it was established that they overstepped their authority with the use of a rubber truncheon. In accordance with article 116 of the Law on Execution of Sanctions, there was a measure of dismissal adopted, later amended to a fine.

82. One should note that in the CPT reports (three regular and three ad hoc), no physical ill-treatment of convicts by the prison personnel has been detected.

### **Accommodation of persons with severe and extremely severe mental disabilities**

83. The Demir Kapija special institution accommodates 348 persons with severe and extremely severe mental disabilities in two departments, as follows:

(a) Health department: the quarters for accommodation, rehabilitation, health protection and education of persons with the most severe intellectual disabilities - 178 inmates;

(b) Health Sub-department - the quarters for accommodation, rehabilitation, health protection and educational working process for persons with special needs - 69 inmates;

(c) Wards C1 and C2<sup>1</sup> accommodate in total 53 inmates (C1 - 27 and C2 - 26); and

(d) The total number of nurses covering three shifts in these wards is 12, of whom 7 for C1 and 5 for C2, that is to say 1 nurse per 26 inmates.

84. These two wards are located in an old building, which was not originally intended for this purpose, but was later on renovated to relatively good condition for the rehabilitation and protection of inmates.

85. Therefore sanitary facilities and living rooms are continually rehabilitated in order to provide for proper living conditions. At the same time, the number of residents has been decreased, where previously there had been overcrowding. For instance, previously 12 inmates were accommodated in one bedroom; now there are 6 inmates in one bedroom, with a shared bathroom and toilet.

86. The living conditions in this department in general have been significantly improved over the last two years in regard to the number of residents per room and in regard to the space and possibilities for educational, social and working engagement. This was achieved with rehabilitation and adaptation of one floor of the department provided by the United Nations Children's Fund (UNICEF).



87. Nurses working in Ward B of the facility are continually trained by neuro-psychiatrists, physiotherapists and medical staff employed in the Skopje Mental Health Institute and Skopje Medical Rehabilitation Institute.

88. The department for accommodation, rehabilitation, health care and training of persons with severe mental disabilities - Depandans (annex) - has 101 inmates.<sup>2</sup>

### **Treatment of substance abusers**

89. For the purpose of improving treatment and rehabilitation of substance abusers, a new modern and adequately constructed facility, which greatly eases the organization of work with these persons, has been opened.

90. This project was prompted by the lack of appropriate premises in regard to the number and gender of abusers, but also in regard to the opportunities for organization of corrective-educational, social and vocational engagement for them in order to provide conditions for humanization of space in the interests of inmates.

91. The new method of work with the abusers is supposed to contribute to full independence of these persons in all spheres of life and for their future lives on their own outside the institution, in better conditions than the previously existing ones.

92. The facility has six spacious and functional apartments, with four triple bedrooms and living room, kitchen and dining room, toilet, bathroom and laundry room.

93. The facility has shared rooms, including a room for physical therapy, an educational room, a large, multi-purpose room for meetings and cultural and entertainment activities, and workrooms for woodwork, paper, cardboard and clay processing. The ground floor accommodates an outpatient clinic, with an intervention room and a dentist's office.

94. In addition to providing adequate, comfortable and humane accommodation for well-organized family life for 72 residents, this institution greatly eases the lives and living conditions of inmates in other departments of the institution.

95. The paediatrician working in the Negotino Medical Centre, which is the municipality closest to Demir Kapija, visits and examines the inmates twice a week, while the new facility accommodates the dentist's office which provides dental services.

96. There is a full medical and social evaluation of inmates in the special institution, with complete medical and social records on each individual resident.

97. An expert team consisting of doctors - epidemiologists of the Health Protection Institute, regional office in Negotino - regularly control the hygiene in the institution. Inmates wear their own clothes, most often donated by humanitarian organizations.

98. In regard to the need to increase the number of defectologists, psychotherapists, nurses and orderlies, first of all in the Health Department, for afternoon and night shifts, which was recommended in one of the CPT reports, the Minister of Labour and Social Policy is making efforts to increase the number of staff in accordance with the funds available in the budget of the Republic, which at the same time is subject to wage restrictions for public sector employees, as recommended by the International Monetary Fund and the World Bank.

### **European Verification Commission**

99. On 6 July 2005 the representatives of the European Verification Commission paid a visit to the special institute in Demir Kapija, with the aim of examining the situation in the institution as regards the respect for human rights and living conditions of inmates. The Commission representatives had the CPT report prepared in 2003 (for the visit made in November 2002) as a reference and assessed the changes made following the recommendations contained in the report.

### **Measures carried out by the special institute in Demir Kapija, as ordered by the Ministry of Labour and Social Policy**

100. The Ministry of Labour and Social Policy, through a continual monitoring of the work of this institution over the last two years, has not noted any cases of violence between residents. In the event of an incident, in view of the handicapped nature of residents, the staff in charge of the ward intervene to prevent severe consequences for the residents.

101. As far as the self-infliction of injuries is concerned, which happens in cases of certain residents of this institution, including frequent self-aggression incidents, the nursing staff makes efforts to reduce such incidents to a minimum number. That is why the number of staff taking care of the residents has been increased.

102. Personal hygiene of residents, due to exceptional efforts of the staff working in the wards, is at a rather high level. Residents have regular changes of clothing, as well as baths and haircuts. General hygiene is also maintained in residents' rooms.

103. The problem of overcrowded rooms has been resolved with the opening of a new facility, the adaptation of one floor in the health department, and the process of deinstitutionalization, owing to which 30 residents have left the institutions and 23 are preparing to leave it.

104. The capacity and still high number of inmates in the Demir Kapija special institution will be resolved with the implementation of the Action Plan lasting until 2010, elaborated in collaboration with the Ministry of Labour and Social Policy and UNICEF, which foresees the establishment and opening of small regional residential homes in a number of towns in the country.

105. The Ministry of Labour and Social Policy regularly, once a month, reminds the management of the special institution in Demir Kapija about the measures to be carried out continually for correct and humane treatment of residents.

106. The processes of deinstitutionalization and decentralization supported by the Ministry of Labour and Social Policy which encourage non-institutional forms of accommodation of persons with mental disabilities in the local community, such as opening of day-care centres for children

and adults with special needs, accommodation in foster families, small residential group homes, are intended to contribute to a continual decrease in the number of inmates in this institution, which will enable it in a foreseeable period of time to reach European standards of work as foreseen for this type of institution.

### **Article 3**

107. Obligations resulting from article 3 of the Convention (the principle of non-refoulement) are fully implemented in the Law on Asylum and Temporary Protection, which entered into force in August 2003.

108. The Law on Asylum and Temporary Protection (Official Gazette of the Republic of Macedonia No. 49/03) foresees that any asylum applicant, recognized refugee or a person under humanitarian protection shall not be expelled or in any other forceful way returned to the border of the State in which his/her life of freedom would be threatened due to his/her race, religion, ethnic affiliation, or affiliation with a particular social group or political conviction, and where he/she should be subjected to torture, inhuman or degrading treatment or punishment.

109. The prohibition of refoulement (the principle of non-refoulement) has absolute character. Namely, under the Law on Asylum and Temporary Protection, this prohibition relates to aliens and stateless persons who are not entitled to asylum, that is to say, for whom there is a reason to be denied this right in accordance with article 6 of the Law, but who will be allowed to stay in the territory of the Republic so long as they may be subjected to torture, inhuman or degrading treatment or punishment in the State of which they are citizens, or in cases of stateless persons, in the State where they have a domicile.

110. The Law on Movement and Stay of Aliens (Official Gazette of the Republic of Macedonia No. 36/92, 26/93 and 45/02), which regulates the manner of execution of security measure of expulsion of a foreigner, foresees in article 39 that no expulsion of foreigner from the Republic will be carried out if his/her life might be threatened due to racial, religious or ethnic affiliation, or political conviction, or if there is danger that a foreigner may be subjected to harassment or inhumane treatment.

111. The Ministry of Internal Affairs has drafted the text of the new Law on Aliens, the adoption of which is a high priority for the Ministry. This law precisely defines the reasons for expulsion and eviction of foreigners from the Republic. A foreigner may not be expelled from the State if his/her life or freedom might be endangered due to his/her race, religion, ethnic affiliation, affiliation with a social group or political belief, and where he/she might be subjected to torture, inhuman or degrading treatment or punishment.

112. In 1999 the Republic ratified the European Convention on Extradition, along with its Additional Protocol. The Republic is also a State party to the Second Additional Protocol to the European Convention on Extradition.

113. According to article 118 of the Constitution, international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.

114. This constitutional provision is implemented with the amendments of the Law on Criminal Procedure (Official Gazette of the Republic of Macedonia No. 15/97, 44/02 and 74/04) adopted in October 2004.

115. Namely, article 559, chapter 31 of the Law on Criminal Procedure, dealing with the extradition procedure and transfer of sentenced persons, reads as follows: “Extradition of the accused and sentenced persons shall be requested and conducted in accordance with this Law unless set otherwise in the European Convention on Extradition and its Protocols or in other international treaties ratified in accordance with the Constitution of the Republic of Macedonia.”

116. Furthermore, the following new provisions in paragraphs 3 and 4 of article 516 in the Law on Criminal Procedure are also relevant:

“The Minister of Justice shall not allow extradition of a foreigner if there are reasonable grounds to believe that he/she may be subjected to torture and other form of cruel, inhuman or degrading treatment or punishment.

On the proposal of the Minister of Justice, the Government of the Republic of Macedonia may decide not to allow extradition, if there are specially justified interest of the state not to do so.”

#### **Article 4**

117. The amendments to the Criminal Code adopted in March 2004, have, inter alia, made significant changes in respect of the title and content of the incrimination under article 142.

118. The provisions contained in article 1, paragraph 1, and article 3, paragraph 3, of the Convention are transposed with the said amendments.

119. In this respect, the criminal offence under article 142 is as follows:

“Torture and other cruel, inhuman or degrading treatment and punishment:

“(a) A person who while performing his duty, as well as a person instructed by an official person or based on an agreement of the official person, shall apply force, threat or some other unlawful instrument or an unlawful manner with the intention to force a confession or some other statement from a defendant, a witness, an expert witness or from another person, or will inflict on another person severe bodily or mental suffering, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her to forfeit some of his/her rights, or shall cause such suffering due to any form of discrimination, shall be punished with imprisonment of one to five years.

“(b) If, due to the acts stipulated in paragraph 1, the damaged party has suffered severe bodily harm or other especially severe consequences, the perpetrator shall be punished with imprisonment of one to ten years.”

## **Article 5**

120. There are no changes in the applicable legislation in respect of establishing criminal liability of perpetrators of criminal offences. The combined application of the territorial and personal principle, which was elaborated in detail in the country's initial report, is still valid.

## **Article 6**

121. In 1998, the Assembly adopted a decision adopting Amendment III to the Constitution, which replaces article 5 of the Constitution.

122. According to Amendment III: "1. Detention until the indictment may last, by a court decision, for a maximum period of 180 days from the day of detention."

123. This constitutional provision has been implemented in article 205, paragraph 4, of the Law on Criminal Procedure: "The total duration of pretrial detention, including the period of deprivation of freedom prior to the adopting of the decision on pretrial detention, may not be longer than 180 days, and after the end of this period the detained person shall be immediately released."

124. The amendments to the Law on Criminal Procedure (Official Gazette of the Republic of Macedonia No. 15/97, 44/2002 and 74/04) adopted in October 2004 regulate the treatment of arrested and detained persons. Namely, in accordance with article 204, paragraphs 7 and 8, of the Law on Criminal Procedure:

"The person shall be held detained in specially arranged police stations, designated with an act of the Minister of Internal Affairs. The detention is verified by the reception officer. The reception officer shall make separate minutes for each detained person which shall contain data on: the date and hour of deprivation of freedom, the reasons for the deprivation of freedom, the reasons for the detention, the time when the person has been advised of his/her rights, visible signs of injuries, illness, mental disorders and similar, when the family, the defence, doctor, the diplomatic-consular mission and similar have been contacted, data on the interview with the person, whether the person has been transferred to another police station, data on the person's release or his/her bringing before court and other relevant data. The person deprived of freedom shall sign the minutes on the hour and date of deprivation of freedom, then the minutes on the release and advice given on the right to defence and shall sign the minutes in their entirety. The reception officer must explain the absence of signature of the detained person on the minutes. The detained person is handed a copy of the minutes upon release or upon being brought before an investigating judge. If the person in accordance with this Law is not brought before an investigating judge and is transferred to another police station the copy of the minutes is forwarded to that police station.

If the person deprived of freedom is brought before an investigating judge, the investigating judge shall ex officio examine the legality of deprivation of freedom and is obliged to issue a decision in this respect. The person deprived of freedom who is not brought before an investigating judge, may within 30 days from the release request the investigating judge at the relevant court to examine the legality and establish this in a

separate decision. An appeal may be submitted against this decision within 48 hours before the Chamber referred to in article 22, paragraph 6, of this Law, which shall deliberate a decision within three days. The appeal stays the execution of the decision.”

125. Article 6, paragraphs 1, 2 and 4, of the Convention are implemented in the Law on Criminal Procedure.

126. Namely, according to article 557 of the Law on Criminal Procedure:

(a) If on the territory of the Republic a crime has been committed by a foreigner who has a residence in a foreign country, beyond the conditions envisaged in article 560 of this Code, all criminal records for the criminal prosecution and trial may be transferred to that country, if the foreign country does not object to this;

(b) Before the decision for investigation is brought, the decision for transfer is brought by the competent Public Prosecutor. During the investigation, the decision on the proposal of the Public Prosecutor is brought by the investigating judge, and by the beginning of the trial, the Chamber (art. 22, para. 6);

(c) Transfer may be allowed for crimes for which a sentence up to 10 years is envisaged, as well as for crimes endangering the public traffic;

(d) If the damaged party is a citizen of the Republic, transfer is not allowed if the citizen objects to this, unless security is ensured for the enforcement of the citizen's legal property claim;

(e) If the accused is detained, the foreign country will be requested in the briefest possible term, within 40 days, to state whether it takes over the prosecution.

127. Furthermore, according to article 563, paragraphs 1 and 2, of the Law on Criminal Procedure:

(a) In emergency situations when there is a threat of the foreigner absconding or hiding, the Ministry of Internal Affairs may deprive the foreigner of freedom for the purpose of bringing the person before an investigating judge at the relevant court, upon a request of the relevant foreign State body, regardless of the form of the request submitted. The request shall contain data necessary for the establishment of the identity of the foreigner, the nature and qualification of the criminal offence, the number of the decision, date, place and name of the foreign State's body determining detention, and a statement that extradition shall be requested through the regular channels. In case detention is determined within the meaning of paragraph 1 of this article, the investigating judge, after the examination, shall inform the Ministry of Internal Affairs, through the Ministry of Justice, about the detention;

(b) The investigating judge shall release the foreigner in the case that the reasons for the detention cease to exist, or in the case that the extradition request has not been submitted within the term determined by the judge, taking due consideration of the distance of the

extradition-requesting State, for submission of the extradition request and the extradition documents may not exceed 40 days from the day the foreigner has been detained, and for which the term for the transfer of the foreigner may not exceed 180 days from the day of detention. The foreign State shall be informed about the term;

(c) Foreigners detained upon decision of the investigating judge may be visited by heads of diplomatic-consular missions in the Republic (if the foreigner is their national). The approval of the visit shall be requested through the Ministry of Justice. Furthermore, representatives of CPT and representatives of the International Committee of the Red Cross, upon approval by the investigating judge, may visit the detained persons. Upon request of CPT, the investigating judge shall be under the obligation to approve the visit and the interview with the detained person. Such visits shall be conducted without supervision.

### **Article 7**

128. The information presented in the initial report of The former Yugoslav Republic of Macedonia regarding the implementation of this article are still valid. There have been no significant changes of the legislation and administrative and court practice.

### **Article 8**

129. In the last period, a priority goal of the Government has been the advancement of the regional cooperation, aiming at more efficient legal assistance in criminal matters.

130. In this context an important segment of the legal order are the following ratified bilateral agreements on mutual legal assistance in criminal matters:

(a) Albania

- (i) Agreement between the Government of The former Yugoslav Republic of Macedonia and the Government of Albania on legal assistance in civil and criminal law cases (Official Gazette of the Republic of Macedonia No. 16/98) entered into force on 2 October 1998;
- (ii) Agreement between the Government of The former Yugoslav Republic of Macedonia and the Government of Albania on mutual enforcement of court decisions in criminal law cases (Official Gazette of the Republic of Macedonia No. 16/98) entered into force on 5 September 1997 and Agreement between the Government of The former Yugoslav Republic of Macedonia and the Government of Albania on extradition (Official Gazette of the Republic of Macedonia No. 16/98) entered into force on 5 September 1997;

(b) Bosnia and Herzegovina

Agreement on legal assistance between the Republic and Bosnia and Herzegovina on legal assistance in civil and criminal law cases, concluded in Skopje on 13 September 2005;

(c) Bulgaria

- (i) Agreement on legal assistance in civil law cases - entered into force on 7 April 2002;
- (ii) Provisional Protocol Agreement on Transfer of sentenced persons between the Government of The former Yugoslav Republic of Macedonia and the United Nations Interim Administration in Kosovo - UNMIK;

(d) Romania

Agreement on legal assistance in civil law cases (Official Gazette of the Republic of Macedonia No. 41/04) entered into force on 24 June 2004;

(e) Slovenia

- (i) Agreement between The former Yugoslav Republic of Macedonia and Slovenia on legal assistance in civil and criminal law cases (Official Gazette of the Republic of Macedonia No. 24/96) entered into force on 5 September 1997;
- (ii) Agreement between The former Yugoslav Republic of Macedonia and Slovenia on mutual enforcement of court decisions in criminal law cases (Official Gazette of the Republic of Macedonia No. 24/96) entered into force on 5 September 1997;
- (iii) Agreement between the Republic and Slovenia on Extradition (Official Gazette of the Republic of Macedonia No. 24/96) entered into force on 5 September 1997;

(f) Serbia and Montenegro

Agreement on legal assistance between the Republic and Serbia and Montenegro on legal assistance in civil and criminal law cases - entered into force on 9 March 2005;

(g) Turkey

Agreement on legal cooperation in civil and criminal law cases between the Republic and Turkey (Official Gazette of the Republic of Macedonia No. 23/97) entered into force on 28 July 2000;

(h) Ukraine

Agreement between the Republic and Ukraine on legal assistance in civil law cases (Official Gazette of the Republic of Macedonia No. 48/2000) entered into force on 20 June 2003;



(i) Croatia

- (i) Agreement between the Republic and Croatia on mutual enforcement of court decisions in criminal law cases (Official Gazette of the Republic of Macedonia No. 17/95) entered into force on 7 August 1997;
- (ii) Agreement between The former Yugoslav Republic of Macedonia and Croatia on legal assistance in civil and criminal law cases (Official Gazette of the Republic of Macedonia No. 19/95) entered into force on 26 May 1995.

131. According to the statistical data of the Ministry of Justice, in 2001 there were 17 requests submitted to the Republic by foreign States for extradition of foreign nationals, in 2002 there were 17 requests, 15 in 2003 and 25 in 2004.

132. In 2001, the Ministry of Justice of the Republic submitted 12 requests for extradition from foreign States, 9 in 2002, 14 in 2003 and 15 in 2004.

133. Thus far, there have been no extradition procedures, i.e. the Republic has not received any requests, nor has the Republic requested extradition from another State, for the crime of torture.

### Article 9

134. In 1999, the Republic ratified the European Convention on Mutual Legal Assistance in Criminal Matters and its additional Protocol.

135. On 24 December 2004, the Assembly adopted the Law on the Ratification of the United Nations Convention against Transnational Organized Crime and its Protocols, by which this legally binding instrument of the United Nations has become an integral part of the legal order, in accordance with the Constitution.

136. In this context, aiming at implementing article 18 of the United Nations Convention against Transnational Organized Crime, which regulates mutual legal assistance, there were amendments made to the Law on Criminal Procedure in October 2004, which prescribe solutions advancing the international criminal law cooperation.

137. Namely, according to article 502 of the Law on Criminal Procedure:

“International criminal law assistance shall be conducted in accordance with the provisions of this Law, unless otherwise provided for in the European Convention on Mutual Legal Assistance in Criminal Matters and its Protocol, the United Nations Convention against Transnational Organized Crime and other international agreements ratified in accordance with the Constitution of the Republic of Macedonia.”

138. Article 522 contains an important provision, which envisages that requests for legal assistance in criminal law cases before domestic courts are submitted to the foreign State's bodies directly by the relevant courts. Similarly, domestic courts are submitted requests for legal assistance by foreign State's bodies.

### **Article 10**

139. The ongoing training of the employees of the Ministry of Internal Affairs is conducted at several levels, in various forms. The objective of the training is to ensure a profile of police expertise and culture, and high levels of initiative, professionalism and expertise in the performance of police duties.

140. Pursuant to the Collective Agreement of the Ministry of Internal Affairs, i.e. chapter 5, articles 91 and 92, employees of the Ministry of Internal Affairs have the right and duty to professionally upgrade themselves in the performance of their duties, for the purpose of fulfilment of the tasks of the Ministry, by which supplementary training and advancement of the employees of the Ministry of Internal Affairs become strategic commitments. This means that education and training of the police is a continuous process. Therefore, the presented percentages vary depending on the additional number of police officers that are professionally upgraded on an ongoing basis.

141. As part of the additional and continuous training of the police at the Ministry of Internal Affairs and within the framework of the Programme for Police Training, there is special focus on the respect for, and protection of, human rights in the performance and competences of the police, while the following issues are particularly elaborated: introduction to human rights and general human rights issues; deprivation of freedom; arrest and police custody in the context of limiting the right to freedom and the right to free movement; use of force, means of coercion and firearms in the context of protection of the right to life; human rights in the course of examination in the context of ensuring the right to fair trial and the presumption of innocence; non-discrimination in the course of police work on any grounds with a special focus on the rights of vulnerable groups, e.g. children, women, old persons and disabled persons; arbitrary interference in the private life from the aspect of protection of the right to privacy and correspondence; policing in a democratic society stressing the basis of democracy, multi-ethnic society and the police; and highlighting the rights of minorities, their representation and police ethics as a code of conduct for the actions of the police.

142. The Ministry of Internal Affairs actively cooperates with domestic and international NGOs, organizing workshops on issues related to police work and overstepping of authorities, domestic violence, multi-ethnic society and the police. Police officers and officers of the criminal police are involved in these workshops.

143. After the signing of the Ohrid Framework Agreement, and as part of the comprehensive reforms of the Ministry of Internal Affairs, this Ministry was tasked with training the existing police personnel. The training is realized through organization and implementation of seminars on the issues, "Human rights and the police" and "Police work in a democratic society", with a special focus on respect for human rights in conditions of police custody. The Organization for Security and Co-operation in Europe (OSCE) and the Helsinki Committee for Human Rights offered assistance in the realization of the training.

144. The reference literature used in the training is part of the Council of Europe project “Human Rights and the Police 1997-2000” and “Human Rights and the Police - Beyond 2000” (Trainer’s manual, Committee for Prevention of Torture, discussion tools, reference manual, police manual and video tape) and literature prepared by the Ministry of Internal Affairs, OSCE, and the Helsinki Committee (Police and Human Rights - Police Training Manual).

145. Since October 2002, 4,200 police officers and officers of the criminal police, or 48 per cent of the total police force, have attended these three-day seminars. Such three-day seminars are still being implemented as part of the additional training of the police. It is planned that the entire police force will be covered by such seminars.

146. Most materials used at the seminars have already been published and are available to the police officers. For example, there have been 6,000 copies printed of the set of regulations related to human rights, including laws, rulebooks, regulations, etc. OSCE and the Canadian International Development Agency have provided financial support in this context.

147. In cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the NGO called Civil Society Information Centre, and with the financial support of the Dutch organization Pax Christi, 10,000 copies have been published in the Macedonian language and 1,500 copies in the Albanian language of the “Pocket brochure on police treatment in accordance with domestic and international standards on human rights in law enforcement”. The copies have been distributed to all employees of the Ministry of Internal Affairs and are part of the reference literature for additional and continuous police training.

148. In order to advance human rights and freedoms of persons under police custody, i.e. arrested persons, there has been a poster placed in each police station entitled “Do you know your rights?”, which has been elaborated in greater detail under article 2, preventive measures. In respect of these rights, each police officer who has tasks related to arrested persons, i.e. persons under police custody in the police station, must inform the person of, or read him/her his/her rights. If the person under police custody invokes any of the rights, the police officer must facilitate the exercise of the right, i.e. do everything in order to see that the person under police custody is ensured respect and protection of human rights and freedoms in conditions of limited freedom of movement.

149. The Ministry of Internal Affairs cooperates with the International Committee of the Red Cross on the organization of and involvement in seminars in the area of humanitarian law, particularly the special police unit Tiger, the rapid deployment police unit, and the other police personnel at the Ministry of Internal Affairs.

150. Furthermore, the Ministry of Internal Affairs conducts training of police officers based on the Programme for additional professional training and advancement of police officers (No. 192-37872 and 1 dated 24 November 1998), which is still in force. The amendments to a number of laws and secondary legislation in the area of competence of police stations and police departments resulted in the necessity of adopting a new Programme for additional professional training and specialization of the police officers. The selection of topics and contents of the Programme have been made by high-ranking police officers (commanding officers), who have selected issues that they deemed are of significance for the police work.

151. After review and after the relevant suggestions of the Working Group on Police Reforms at the Ministry of Internal Affairs had been taken into consideration, the new Programme was adopted in December 2004 and was forwarded to the organizational units of the Ministry of Internal Affairs for realization.

152. The Programme is aimed at ensuring teaching material for continuous and professional training of the police employees at the police stations and police departments at the Ministry of Internal Affairs, enabling them to successfully perform their tasks under the competence of the Public Security Sector. The Programme includes regulations and topics on the work of the police (laws and secondary legislation), with a particular attention to the practical enforcement of legal competences (police tactics).

153. The Code of Police Ethics adopted in 2004 envisages police training in accordance with its aims and competences, based on principles of democracy, rule of law and respect for human rights and freedoms, and the principles of combating racism and xenophobia (arts. 26-30). Basic police training is open and transparent to the public.

154. The National Ombudsman has been involved in the training of trainers of the Ministry of Internal Affairs (30 in total), organized by the Ministry of Internal Affairs and OSCE, for the purpose of implementing the Code of Police Ethics of the Ministry of Internal Affairs - applications and complaints by citizens and the role of the Ombudsman and the police.

155. The Police Academy, a higher education State institution in the area of security, conducts higher education, scientific research and applications, and continuing education.

156. The Police Academy was established as a tertiary institution in the area of security under the Law on the Police Academy (Official Gazette of the Republic of Macedonia No. 40/03). The Police Academy educates personnel for the needs of the Ministry of Internal Affairs, other State bodies and other organizations, institutions and legal entities working in the area of security. The Police Academy offers higher education - graduate studies, specialized professional degrees, M.Sc. studies and continuing education for persons who have already acquired a certain degree of education, as well as basic police training, specialist training and security management training. The Police Academy also offers doctoral studies. This degree is acquired upon registration and defence of the doctoral dissertation in the area of security.

157. The process of regular and continuing education at the Police Academy offers students and other persons attending, as well as officers of the police services at the Ministry of Internal Affairs, specialist and management training, and training on the regulatory and legal framework of the police competences, accompanied with a consistent respect for human rights and freedoms, with a special focus on issues related to prohibition of torture in the exercise of police competences.

158. The study and programmes on specific subjects have been prepared in the context of the applicable international and national legislation of the Republic and are realized at all levels of education of the police personnel, aiming at stimulating and developing the humane, civilized relations between the police and the citizenry and attaining a high level of confidence and cooperation, as an important prerequisite for preventing and efficiently and effectively combating organized crime and other negative occurrences in society. Education students at the

Academy, as well as other attendees of basic training and continuing education are especially focused in their studies on humane aspects of the conduct towards and treatment of citizens, respect for their dignity, and appropriateness of measures and methods of investigation, combat skills and protection of the constitutional order.

159. Human rights issues are part of all programmes at all levels of education, including issues related to women's and minority rights (constitutional law, police and human rights, police ethics and deontology, victimology, international law and international relations, conflict management, European law, police law and enforcement of competences, police work in a multi-ethnic society, and gender differences (awareness of differences).

160. Training in the area of human rights and freedoms is part of the continuing professional upgrading and education process at the Police Academy, as a separate subject under the curricula "Human Rights and Police", and as additional training conducted through various courses for requalification and professional training.

161. Under the education and training process, there is cooperation as well with representatives of the international missions OSCE and International Criminal Investigative Training Assistance Programme (ICITAP) in respect of the basic training, as well as in continuing education, through realization of various courses and seminars for training the trainers, specialist courses for the criminal police and border police, and management training. Furthermore, there have recently been several seminars realized by the Council of Europe and the Ministry of Internal Affairs, elaborating issues in the area of human rights and the police, including police relations management, protection of rights and freedoms of citizens, and preventing torture and abuse by police authorities. At these seminars and courses there has been special attention paid to the procedures for use of coercive means, deprivation of freedom, the duration of detention, respect for human rights and personal dignity, legality, objectivity, fairness and non-discriminatory treatment.

162. In cooperation with the Ministry of Justice, throughout the year the Police Academy organizes courses, seminars and advisory sessions for the purpose of successful, efficient and lawful performance of the security function of the penitentiary-correctional facilities. The Ministry of Justice implements these activities in cooperation with the Penology Association of the Republic and the Ministry of Internal Affairs.

163. The Sector for Internal Control and Professional Standards (SICPS), representing the Ministry of Internal Affairs, participates in the working advisory group on advancement of the cooperation of the Ministry of Internal Affairs, NGOs and the National Ombudsman (MINOP), which was established under the auspices of OHCHR, aiming at transparent treatment by the officers of the Ministry of Internal Affairs. This group works through open discussions regarding processing of complaints by citizens, submitted to the National Ombudsman and NGOs.

164. Representatives of the SICPS participate as trainer-lecturers in the "Civil Police Academy", which is held under the Project for police work in cooperation with the United States Department of Justice programme, ICITAP, with the goal of introducing citizens to the competences and the manner of work of the SICPS inspectors.

165. In the context of training officers of the security services and the professional personnel at the penitentiary-correctional facilities and educational-correctional institutions, as of 2002, the Directorate for Execution of Sanctions at the Ministry of Justice, in cooperation with OSCE, has been carrying out a pilot project for the establishment of a training centre, as an organized form of education and training of employees at these institutions.

166. In 2002, 2003 and 2004, under this project, there was 10-day training conducted for the employees at the penitentiary-correctional facilities and at educational-correctional institutions.

167. In the theoretical part of the training, domestic experts elaborated the provisions of the Law on Execution of Sanctions related to the basic principles and management executing sanctions, legal assistance to convicted persons, health protection of convicted persons, transfer and benefits for convicted persons, use of physical force, chemical substances and firearms. Furthermore, the relevant provisions of the Criminal Code, the Law on Criminal Procedure, the European Prison Rules, and the United Nations Standard Minimum Rules for the Treatment of Prisoners and other international norms were elaborated as well.

168. The practical part of the training included: visits and introduction to the functioning of the Skopje Prison; practical work at the ward for enhanced supervision, as well as facilities where convicted persons serve the measure of solitary confinement; and enforcement of house rules in the closed ward. A significant part of the training consisted of a workshop on conflict resolution, intended for employees at the correctional services and the instruction services, realized by the NGO, Emancipation, Solidarity and Equality (ESE).

169. Under the reform of the penitentiary system, the establishment of an education centre for personnel is envisaged at penitentiary-correctional facilities in the Republic.

170. Raising the level of respect for the Standard Minimum Rules for the Treatment of Prisoners and implementing of informal education activities and correctional activities at the women's ward are two goals of the project realized in the April-June 2001 period by ESE in cooperation with the Directorate for Execution of Sanctions at the Ministry of Justice, with the professional assistance of the Social Work Centre.

171. In the context of the project activities, there were 23 behavioural-educational workshops implemented for prisoners, the purpose of which was to improve their self-control, self-respect, and rational and constructive planning for the future after serving their sentences.

172. As an addition to the implemented workshops at the women's ward, there was a sewing course realized for work-capable women prisoners, and sewing machines were procured that remained property of the women's ward. Through attending these courses, the prisoners acquired practical skills and knowledge facilitating both their future inclusion in the employment process, after serving their sentences, and the process of their re-socialization.

173. In parallel with these activities, there was a seminar held for authorized officers at the penitentiary-correctional facilities and educational-correctional institutions in the Republic.

174. The lectures and experiences presented at the seminar were published under the title, *Psychological basis of prison treatment*. This publication contains a handbook on the conduct of education-behaviour workshops, intended for authorized officers, and a handbook for implementation of workshops, intended for convicted persons.

175. These activities not only help to advance the application of international standards, but also to ensure tools that can be applied in the everyday work of the prison personnel that leads to establishment of efficient and modern prison administration.

176. From 25 to 27 April 2004, in Ohrid, the OSCE Monitoring Mission in Skopje, the Centre for Continuous Education at the Association of Judges of the Republic of Macedonia, the Council of Europe and OHCHR organized a conference on the issue: "International and national obligations related to treatment of detained and convicted persons." Representatives of the judiciary, the Public Prosecutor's Office, and of relevant domestic and international institutions and organizations took part in this conference.

177. Taking into consideration the principles for protection of human rights, humaneness, rule of law, and the cooperation with the relevant international bodies, bearing in mind as well the established international standards that guarantee the right to physical and mental integrity, the right to dignity and security of the person, and the prohibition of torture, inhuman or degrading treatment or punishment, the participants in this conference adopted the following conclusions:

(a) The legislative and practical efforts towards undertaking legal measures for implementation of the prohibition of torture and inhuman or degrading treatment or punishment, especially in the area of criminal law and procedure, in the area of exercise of criminal law jurisdiction, the duties to punish and prohibit extradition and the duty for training the prosecution bodies' officers, the duty to implement immediate, transparent and efficient investigation, the right to appeal, to compensation and rehabilitation of the damaged parties, the rule excluding illegally obtained evidence and suppression of impunity of the authorized officers who have overstepped their authority and violated the prohibition of torture and inhuman or degrading treatment or punishment, are welcomed.

(b) Judges are under the obligation to examine any information presented to them on the part of any source, which indicates torture and inhuman or degrading treatment or punishment; such information is to be entered into the minutes and the judges must inform the competent public prosecutor in writing and order urgent forensic examination.

(c) Judges are invited to use other mechanisms such as visits to detained and convicted persons, and to supervise the treatment of these persons.

(d) The Public Prosecutor is obliged to examine any information submitted to him/her on the part of any source, indicating torture and inhuman or degrading treatment or punishment; he/she is obliged to examine all allegations urgently, completely and in an unbiased manner, to gather evidence, and to act immediately in accordance with legal competences, and in cases of established violations, to institute an urgent and efficient procedure.

(e) In this respect, the Public Prosecutor or his/her Deputy are to actively cooperate with the Ministry of Internal Affairs and other competent bodies that are obliged, upon his/her request, to submit all data and information without exception with reference to the allegations, and are to ensure the presence of authorized officers for the purposes of their examination.

178. It is necessary to proceed further with the continuing education in this area for judges, public prosecutors, and their deputies, as well as responsible officers at the Ministry of Justice, enabling them to exercise their competences and duties.

### **Articles 11, 12 and 13**

179. Chapter 10 of the Code of Police Ethics entitled “responsibility and control of the police”, i.e. article 60, envisages that “The police is responsible before the State, the citizens and their representatives, through external control of its work”, while article 61 envisages that “The State control on the police is divided between the legislative, executive and judiciary authorities”. Article 62 of the Code envisages that “In the course of developing the relations among the police and the public, there is a need of promoting mechanisms of responsibility, based on the communication and common understanding between members of the police and the public. Members of the police are responsible for their actions before the citizens of The former Yugoslav Republic of Macedonia. In an event of violation of the constitutional and legal rights from the members of the police, the citizens can also ask for protection of these rights from the Ombudsman.”

180. Chapter XI of the Code entitled “Research and international cooperation”, i.e. article 63 envisages that “The State promotes and encourages researches for the police, from the police and also external institutions.”

181. Article 100 of the Rulebook on the performance of tasks by the Ministry of Internal Affairs (Official Gazette of the Republic of Macedonia Nos. 12/98 and 15/03) envisages that, according to a previously approved plan, there shall be supervisory-instructional activities conducted, i.e. inspection of the work of the organizational units of the Ministry.

182. Chapter V of the Rules of conduct and mutual relations of employees with special tasks and authorizations at the Ministry of Internal Affairs envisages the basis and modalities for control of the work by the immediately superior managerial officers of their subordinates.

183. Taking into consideration the previously referred-to principles and organizational set-up of the Ministry of Internal Affairs, which functions based on the principles of hierarchy and subordination, the higher-ranking organizational units of the Ministry of Internal Affairs perform inspection of the work of lower-ranking organizational units. The inspection consists of examination of the file records and other written material in respect of the performance of the professional tasks and exercise of authorities which limit human rights, direct inspection of places where the security forces at the local level perform regular tasks of maintenance of the public peace and order, inspection being conducted in other cases, as necessary.

184. For the purpose of the control of the legal, professional and efficient performance of the activities and tasks at the Ministry of Internal Affairs, in accordance with article 37 of the Rulebook of the performance of the tasks by the Sector for Internal Control and Professional



Standards of the Ministry of Internal Affairs (SICPS), the Minister may order SICPS to undertake supervision and control, i.e. inspection of the managerial officers at the central and local level. The Head of the Sector, i.e. the Inspector of the Sector, prepares a final report of the performed supervision and control, i.e. inspection, which is submitted to the Head of Sector. After the report has been reviewed and approved by the Head of Sector, the final report on the control and supervision, i.e. inspection, is submitted to the Minister.

185. In accordance with the said Rulebook, the Sector for Internal Control and Professional Standards, upon information or applications submitted by citizens perform supervision-inspection of the unlawful and unprofessional conduct by the employees of the Ministry of Internal Affairs.

186. The internal control at the Ministry of Internal Affairs is performed by SICPS, which is a separate organizational unit within the Cabinet of the Minister that is directly engaged in the clarification and documentation of the overstepping of authority, abuse of official duty, and other unlawful acts, perpetrated by the employees of the Ministry of Internal Affairs (Central Police Service, Security and Counter-Intelligence Department, and the Police Academy).

187. At the same time, in accordance with the defined scope of competences and activities, SICPS proposes relevant measures for prevention and resolution of established abuses of official duties by employees of the Ministry of Internal Affairs.

188. In accordance with the provisions of the Rulebook on the performance of tasks by SICPS (hereinafter referred to as the Rulebook) (SD. No. 15.1-7716/1 dated 29 September 2003), and in accordance with the provisions of the Decision on the abolishment of the type and level of confidentiality (No. 161/5294/1, dated 3 February 2004), and the Rulebook amending and supplementing the Rulebook on the performance of tasks by SICPS at the Ministry of Internal Affairs (No. 161-38562, dated 12 July 2004), the detection and documentation of the unlawful and unprofessional conduct by employees of the Ministry is done on the basis of:

- (a) Information, data or indications that are submitted by the employees of the Ministry of Internal Affairs upon their own initiative or upon request;
- (b) Applications submitted by citizens and institutions;
- (c) Order of the Ministry of Internal Affairs.

189. In accordance with the Rulebook (art. 1), SICPS conducts investigations, supervision and control at the Ministry of Internal Affairs.

190. Investigation implies any procedure of SICPS in respect of detection and documentation of unlawful and unprofessional conduct of the employees of the Ministry.

191. Supervision and control consists of any procedure of SICPS undertaken for control of the legality, unified and efficient performance of the activities and tasks of the organizational units of the Ministry.

192. SICPS is managed by the Assistant Minister.

193. All regional centres (Sectors for Internal Affairs) in the country, have detached inspectors (at the level of chief inspector) who are accountable for their work to the Assistant Minister who manages SICPS.

### **Competences of SICPS**

194. SICPS is directly engaged in documenting the overstepping of legal authority, and the disclosure of confidential information, illegal and unauthorized use of material-technical means and other illegal activities perpetrated by the employees of the Ministry of Internal Affairs, and undertakes measures for the clarification of such activities in an appropriate procedure.

195. In its work, SICPS records, examines and establishes the facts of each case (when an employee of the Ministry of Internal Affairs is involved) and the purpose is to ensure thorough, unbiased and objective investigation with the sole purpose of strengthening the trust of citizens in the Ministry of Internal Affairs.

196. SICPS is directly involved in the clarification of irregularities in the work of employees of the Ministry of Internal Affairs, acting upon unanimous applications, submissions and complaints of citizens and employees of the Ministry of Internal Affairs, then acting upon tasks given by the higher managerial officers of the Ministry of Internal Affairs; it also performs checks and forwards replies to requests submitted by the Public Prosecutor or the National Ombudsman related to procedures instituted against employees of the Ministry of Internal Affairs, and acts upon operative indications regarding acts perpetrated by employees of the Ministry of Internal Affairs, which are contrary to the laws and secondary legislation.

197. Citizens may submit their applications orally or in written form. Minutes are made regarding each orally presented application, which contain the name and surname of the person submitting the application, and his/her date and place of birth, residence and address of place of residence, telephone number and other data that would enable further contact with him/her, with a second part of the minutes containing a record of the allegations of the person submitting the applications. There is also a section of the minutes (which are made on previously prepared forms) where the description of the appearance of the person submitting the application is entered, in case of eventual suspicions that the person is under the influence of alcohol or narcotic substances. The minutes are signed by the person submitting the application and the authorized officer who prepares the minutes. The form for the preparation of the minutes upon an oral application is available to any authorized officer of the Ministry of Internal Affairs and he/she can fill it in, after which the minutes are obligatorily forwarded to SICPS for further procedures to be undertaken upon the allegations contained therein.

198. In the course of the investigation, SICPS has the following competences:

(a) Reviewing all relevant data, indications, information and reports related to the investigation;

(b) Hearing the person submitting the application, all witnesses and any person who has direct information on the facts related to the claims contained in the application;

(c) Requesting the person submitting the application and the witnesses to write a statement in their own words. In addition to the written statement, upon consent of the person submitting the application, i.e. the witness, there can be audio or video recordings made of the person giving the statement;

(d) Hearing employees of the Ministry that could have indications of important facts related to the investigation;

(e) When the application relates to a bodily injury of any person, there shall be photographs taken of the injury, which will be enclosed in the case file, as well as medical findings established in the course of the investigation as evidence material. If necessary, the inspector may engage an expert witness in a given field to establish the findings and give an expert opinion;

(f) Hearing the employee against whom the investigation is conducted, after he/she has been informed about the claims presented against him/her. The employee may write the official note or written clarification or present it orally, in which case there shall be a video or audio recording made of the statement;

(g) SICPS conducts an investigation in all cases in which an employee or employees of the Ministry have used firearms with fatal consequences or resulting in bodily injury or in all cases of use of coercion means of larger scale;

(h) In the course of the investigation, SICPS has the right to apply operative and operative-technical means and methods;

(i) SICPS has the right to perform supervision and control of the work of one or more organizational units of the Ministry of Internal Affairs;

(j) In cases where necessary, SICPS has the right to have blood or urine sample analysis made in order to establish the presence of alcohol and/or narcotics in the blood of the employee of the Ministry of Internal Affairs;

(k) In cases in which, during the investigation, SICPS has established that an employee of the Ministry of Internal Affairs has violated the provisions of the Collective Agreement of the Ministry of Internal Affairs, the entire documentation is submitted to the Head of the organizational unit (where the concerned person is employed) for purposes of institution, i.e. submission of a proposal for institution of a disciplinary procedure;

(l) In cases when during the inspection-investigation related to unlawful and unprofessional conduct by an employee of the Ministry there have been violations of working duties established containing elements of a criminal offence, SICPS shall inform the competent Public Prosecutor's Office.

199. In each investigation-inspection in which a criminal offence has been established, or a violation of the working discipline or unprofessional conduct by an employee of the Ministry has been established, the Head of Sector will inform the Minister of the Interior. Additionally, if during the investigation-inspection it has been established that there are grounds to institute a dismissal procedure due to violations of the working discipline, in accordance with the Law on

Internal Affairs, the Law on Labour Relations and the Collective Agreement of the Ministry of Internal Affairs, SICPS will propose that the inspection-investigation continues before the Dismissal Commission.

200. Depending on the form and gravity of the unlawful and unprofessional conduct, the investigation may last 30 or 90 days, but not exceed 6 months. The inspector at SICPS makes a final report about the conducted investigation and its results and submits the report to the Head of Sector for review and approval, after which the report is submitted to the Minister.

201. In the performance of the activities under its competences, i.e. in the course of conducting an investigation, SICPS works objectively, fairly, correctly and equally, respecting the reputation and dignity of each employee at the Ministry of Internal Affairs, i.e. citizen of the Republic.

202. In cases when in the course of investigation it has been established that the employee perpetrated a minor violation of the working discipline, in accordance with article 75 of the Collective Agreement of the Ministry of Internal Affairs (Official Gazette of the Republic of Macedonia Nos. 8/98, 12/00, 3/04) the superior officer of the concerned person will be submitted a proposal for institution of the measure reduction of the salary for the current month.

203. In cases when in the course of the investigation it has been established that the person concerned has perpetrated a violation of the working discipline or has not fulfilled working obligations, in accordance with article 143, paragraphs 5 and 6, of the Collective Agreement of the Ministry of Internal Affairs, the immediately superior officer of the concerned person shall be submitted a proposal for institution of an initiative for continuation of the investigation before the Dismissal Commission, i.e. for institution of a procedure for establishment of responsibility for the violation of the working discipline.

204. After the end of the hearing, the Commission shall establish the responsibility of the employee and shall prepare a written report for the Minister for purposes of adoption of a relevant decision. If the Commission establishes that the employee is not responsible or that the conditions for adoption of a decision for dismissal in accordance with article 148, paragraph 2, of the Collective Agreement have not been fulfilled, the Commission shall submit the Minister a proposal for rejection of the proposal, i.e. a proposal for closing the procedure. If the Minister does not agree with the proposal, the case may be returned for review or the Minister may adopt a different decision in accordance with article 149, paragraph 1, of the Collective Agreement. In the context of exercise of the labour relations rights, the employee has the right to submit an objection to the second instance decision-making body, and to institute an appeal before the relevant court.

205. If it is established that the employee has perpetrated a violation of the working discipline, depending on the level of responsibility of the employee, the circumstances under which the violation of the working discipline has been perpetrated, the gravity of the violation, and the ensuing consequences, in accordance with article 148 of the Collective Agreement the Dismissal Commission, the Minister shall adopt a decision on dismissal. Until the adoption of the legally binding decision on the dismissal, the employee may be removed from the job and from the

Ministry if: with her/his presence on the job he/she represents an immediate threat to the life and health of the employees or other persons; greater value assets are destroyed, or his/her presence at the job would have a detrimental effect on the work of the Ministry, or a criminal procedure for criminal offence perpetrated at work or in relation to the work has been instituted.

206. After the investigation, SICPS shall establish a case containing elements of a perpetrated criminal offence, in accordance with article 3 of the Rulebook on the performance of tasks of SICPS, SICPS shall inform the competent Public Prosecutor's Office.

207. In addition, in accordance with article 142, paragraph 6, of the Law on Criminal Procedure (Official Gazette of the Republic of Macedonia Nos. 15/97, 44/02, 74/04), based on the gathered evidence and indications, criminal charges are prepared against the employee who has perpetrated an act which represents a criminal offence, and the charges along with the evidence and the documents on the undertaken measures and activities are submitted to the relevant Public Prosecutor's Office.

208. The tables present a review of the data relevant for the work of SICPS in respect of the procedures against authorized officers for the period from 2003 to 2005.

**Review of data in the area of competence of the Sector for Internal Control  
and Professional Standards (SICPS)**

**Table I**

**Data on the number of authorized officers for whom SICPS has proposed  
measures according to type of measure and year**

	Cases processed by SICPS	Proposals for submission of criminal charges	Proposals for institution of disciplinary procedure	Reduction of salary	Written warning	Transfer to another job	Removal from the job
2003	770	197	116	6	18	3	3
2004	1 377	50	117	63	36	85	12
2005 until 1 December	1 286	35	64	34	34	34	24
Total	3 433	282	297	103	88	122	39

**Table II**

**Applications against authorized officers for use of physical force**

	Total number of applications	With grounds	Without grounds	No evidence
2004	54	22	27	5
Until 1 December 2005	71	11	47	13
Total	125	33	74	18

209. In the period from 1 January to 1 December 2005, SICPS processed 71 applications against authorized officers for use of physical force. After the relevant measures had been undertaken, in 11 of these cases it was established that the applications were with grounds,

in 13 cases it was established that the allegations for the use of physical force could not be confirmed owing to lack of sufficient evidence, while 47 cases were without any grounds. In cases when there was unjustified use of physical force, SICPS proposed the relevant measures. Hence, in three cases against three authorized officers who had overstepped their authorities criminal prosecution measures were undertaken, and there were measures proposed for institution of a disciplinary procedure; in two cases regarding two authorized officers, it was proposed to institute misdemeanour procedures and disciplinary measures; in four cases involving nine authorized officers disciplinary measures were proposed; against three authorized officers reduction of salary was proposed, while in one case reduction of salary and transfer to another job was proposed.

210. In 2004, SICPS processed 54 applications against authorized officers for use of physical force, 27 of which were without grounds, 22 with grounds, and in 5 cases, due to lack of sufficient evidence, the allegations in the application for use of physical force could not be confirmed. In cases in which physical force was applied without justification, relevant measures were proposed. In one case, criminal prosecution was proposed against one person, misdemeanour prosecution was proposed in one case, and in the other cases disciplinary measures were proposed.

**Table III**

**Applications from the National Ombudsman**

	Total number of applications	Answered	With grounds	Partially with grounds
2004	35	35	5	
Until 1 December 2005	50	40	2	1
Total	85	75	7	1

211. From 1 January to December 2005, SICPS received 50 applications from the National Ombudsman, 40 of which were answered, while with regard to the others there are measures and activities undertaken for their examination. In cases processed by SICPS, in two cases there was overstepping of authority by an authorized officer established and against five authorized officers there was a proposal for establishment of disciplinary responsibility, against two persons reduction of salary was proposed, while in one case partial grounds for the allegations contained in the application were established and disciplinary measures were proposed against one authorized person.

212. In 2004, SICPS processed a total number of 35 applications submitted by the National Ombudsman and they were all answered. Based on activities undertaken by SICPS, in five cases irregularities were established in the undertaking of official tasks by authorized officers, and relevant measures were undertaken against these persons. In one case, criminal charges were submitted, and then there was one request for institution of misdemeanour procedure, for reduction of salary, and in three cases institutional procedures for establishment of responsibility for violation of the working discipline were proposed.

213. According to the recorded statistical data in the period from 1999 to 2004, no offences were registered in the country under article 142 - "torture and other cruel, inhuman or degrading treatment and punishment" - while under article 143 - "ill treatment in the performance of duties" - nine criminal cases were registered - three in 2002, five in 2003 and one in 2004 - perpetrated by authorized officers of the Ministry of Internal Affairs.

214. The Government actively cooperates with CPT. CPT has thus far made three regular visits to the Republic, in 1998, 2001 and in 2002, and three extraordinary visits in July 2001, 2002 and 2004. The Government requested publication of all reports along with its comments, except for the last visit in July 2004, which was submitted to the Government at the end of November that year. By this, the Government demonstrated its firm commitments to overcoming the problems identified by CPT.

215. Aiming at realizing one of the key recommendations of CPT, i.e. that the national authorities present a formal statement addressed to law enforcement officers in which it would be pointed out that ill-treatment of detained persons is a violation of the state foundations and will not be tolerated and that it will be sanctioned, on 10 February 2003 the Government reviewed and adopted the Information on the Report on the Republic by CPT dated July 2002 and the preliminary remarks after the November 2002 visit. In this respect a series of conclusions were adopted for the improvement of the cooperation with CPT, and a conclusion that ill-treatment of detained or apprehended persons by law enforcement officers is contrary to the basic values of a democratic society, respect for human rights and rule of law, that such acts shall not be tolerated and that the perpetrators shall be subject to strict sanctions, was prescribed by law.

216. The main recommendation of CPT is related to the two key issues: combating impunity and safeguards against ill-treatment.

217. The Ministry of Internal Affairs and the Ministry of Justice have undertaken a series of activities to overcome the established situation.

218. The Action Programme for the European Partnership, in the part elaborating human rights, places the focus on CPT reports from visits to the Republic primarily on dealing with impunity and safeguard measures. One of the key activities is also the continuous training of all institutions involved in the implementation of this Convention.

219. The major activities in respect to impunity are the following: submission of annual information to the Government to register cases of overstepping of authority, submission of annual information on the undertaken disciplinary and criminal procedures; improvement of cooperation with the Public Prosecutor's Office and with the courts on the clarification of such cases; strengthening the capacities of the Sector for Professional Standards at the Ministry of Internal Affairs for detection and examination of irregularities; and improvement of the procedures for detection and investigation of the irregularities and their implementation.

220. The implementation of the Convention in terms of safeguards against ill-treatment envisages improvement of the procedures for apprehension (arrests) and custody at the police stations and prisons, registering cases of violations of the procedures for deprivation of freedom and for detention, undertaking measures for resolution of cases, strict observance of the rights of persons deprived of freedom, and training of police officers to respect legal rights in relation to 24-hour police custody.

#### **Article 14**

221. With regard to the right to compensation by victims of torture, the information presented in the initial report is still valid.

#### **Article 15**

222. The Law on Criminal Procedure (Official Gazette of the Republic of Macedonia Nos. 15/97, 44/2002 and 74/04), i.e. its article 15, envisages unconditional exclusion of legally invalid evidence, prescribing that evidence obtained in an illegal manner or through violations of freedoms and rights established by the Constitution, law and ratified international agreements and the evidence deriving from such violations, may not be used and a court decision must not be based on such evidence.

223. Furthermore, the Law on Criminal Procedure prescribes the manner in which the person charged is to be examined, envisaging that his/her personality is to be fully respected, while use of force, threats or other similar means aimed at extorting a confession or statement are prohibited.

224. Article 273, paragraph 2, prohibits application of medical interventions or means that would affect the will of the person charged during his/her giving a statement.

225. The violations of these prohibitions results in the impossibility for the court decision to be based on such a statement of the person charged, i.e. this is a substantive violation of the provisions of the criminal procedure, against which an appeal may be submitted.

#### **Article 16**

226. In respect of the implementation of this article, the information presented in the initial report is still valid.

### **III. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE**

227. The Government was not asked for additional information in reference to the general recommendations on the form and content of periodic reports.

### **IV. OBSERVATIONS ON THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS**

228. With reference to the Committee's recommendation in connection with The former Yugoslav Republic of Macedonia contained in paragraphs 9-12 of the conclusions and recommendations of the Committee on the initial report (CAT/C/XXII/Misc. 9), dated



April 1999, it is underlined that the Government submitted a preliminary reply in the letter from the then Permanent Representative of the Permanent Mission of The former Yugoslav Republic of Macedonia to the United Nations Office in Geneva, Goce Petreski, to the Committee Chairman, Peter Burns, forwarded on 13 May 1999.

229. In this respect in addition to the information in the above-mentioned letter, the following clarifications are presented:

(a) The Committee's recommendations contained in paragraph 9 related to the introduction of the definition of torture in the Macedonian legislation as contained in the Convention has been fully implemented.

Namely, the said definition has been taken in full and incorporated in article 142 of the Criminal Code of the Republic of Macedonia after the amendments to this Law adopted in March 2004. The scope of these provisions is elaborated in detail in this periodic report in the part referring to the implementation of articles 1 and 2 of the Convention, above.

(b) In connection with the Committee's remarks contained in paragraph 10 of the quoted document, it is underlined that more detailed explanations are presented in the elaboration of the implementation of article 11 in the present report.

(c) The recommendations under 11 and 12 have been fully implemented, which has been confirmed in the dialogue with the Chairman of the Committee immediately after the presentation of the initial report of the State.

#### **Notes**

<sup>1</sup> Identified as most problematic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during its visit in November 2002.

<sup>2</sup> This facility did not cause any special concern for CPT.

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