



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

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## Committee against Torture

Forty-fifth session

1-19 November 2010

### List of issues prior to the submission of the third periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/3)\*

### Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations.

#### Articles 1 and 4

1. Please provide information on whether the definition of torture contained in article 142 of the Penal Code includes all the elements specified in article 1 of the Convention and especially with regard to instigation, consent or acquiescence of acts of torture.
2. In its previous concluding observations (para. 10)<sup>1</sup>, the Committee expressed its concern about the low penalties imposed on persons convicted for crimes of torture. Please provide information on the measures taken by the State party to ensure that appropriate penalties for acts of torture are provided for in the Penal Code in accordance with the gravity of the crime.

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\* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> Unless otherwise indicated, paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/MKD/CO/2.

**Article 2<sup>2</sup>**

3. In the light of the Committee's previous concluding observations (para. 5), in which it expressed concern about the scope of the Amnesty Law adopted in 2002 of "all criminal acts related to the 2001 conflict", please provide detailed information on the steps taken to ensure that acts of torture are not included in any amnesty and are thoroughly investigated and, if appropriate, prosecuted and sanctioned, including information on the results of such investigations.

4. Please provide the Committee with updated statistics with regard to penal sanctions for the crime of torture, including on who has been found guilty and on the punishment provided.

5. Please provide detailed information on the steps taken to ensure the independence and the effectiveness of the Public Prosecution Office as to ensure that allegations of torture and cruel and inhuman or degrading treatment are promptly and impartially investigated and, if appropriate, prosecuted and sanctioned, as recommended by the Committee in its previous concluding observations (para. 6). Please also provide updated information on the reform process to strengthen the independence and effectiveness of the Public Prosecution Office.

6. In its previous concluding observations (para. 7), the Committee expressed concern about the lack of an independent and external oversight mechanism to monitor police conduct. Please provide information on the measures taken to establish a system of independent and impartial monitoring to investigate and monitor alleged police misconduct and to promote a policy of effective sanctioning of law enforcement officials responsible for those acts, for example, to dismiss police officers convicted of ill treatment and, at minimum, to downgrade commanding police officers who have tolerated or failed to prevent ill-treatment.

7. In the light of the Committee's previous concluding observations (para. 7), please provide information on:

(a) The measures undertaken to strengthen and extend the mandate of the Ombudsman, including the capacity to investigate acts committed by police officers, to improve the cooperation between the Sector for Internal Control and Professional Standards and the Ombudsman, and to guarantee adequate follow-up to the Ombudsman's recommendations by all relevant authorities;

(b) The Ombudsman's mandate, the number of complaints received as regards violations of the provisions of the Convention and the actions taken as well as their outcome, including redress to victims of these violations;

(c) The measures taken and future plans to ensure the Ombudsman meets the criteria for "A" accreditation.

8. In the light of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the

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<sup>2</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2, paragraph 3, states: "the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chap. V of the same general comment.

report on its visit to the former Yugoslav Republic of Macedonia from 30 June to 3 July 2008,<sup>3</sup> please indicate the measures taken:

- (a) To adopt a strategic plan to reform the prison system and to find suitable alternative premises for the Educational-Correctional Institution;<sup>4</sup>
- (b) To review the use of the cells in the confinement area;<sup>5</sup>
- (c) To render Idrizovo Prison safe and hygienic and to provide a proper regime of activities<sup>6</sup> and remedy the deficiency in the material conditions of detention at the Tetovo Police Station;<sup>7</sup>
- (d) To provide conditions of detention of a basically acceptable minimum level in the remand section of Skopje Prison;<sup>8</sup>
- (e) To institute a regime permitting all remand prisoners to be offered a minimum of one hour of outdoor exercise every day.<sup>9</sup>

9. Please provide detailed information on whether measures have been taken by the State party to strengthen its effort to prevent, combat and punish violence against women and children, including domestic violence, and to ensure adequate implementation of the national strategy to prevent domestic violence (para. 19).

10. In the light of the recommendations of the Committee on the Elimination of Discrimination against Women as regards the high prevalence of violence against women including domestic violence (CEDAW/C/MKD/CO/3, paras. 23-24), please provide information on what measures have been taken:

- (a) To address all forms of violence against women, including domestic violence;
- (b) To further elaborate and effectively implement legislation on violence against women so as to ensure that perpetrators are effectively prosecuted and punished and that victims receive adequate protection and assistance;
- (c) To provide shelters for women victims of violence;
- (d) To implement educational and awareness-raising measures that highlight the unacceptability of all forms of violence against women and are directed to the general public as well as to law enforcement officials, the judiciary, health providers, social workers and community leaders.<sup>10</sup>

11. Please provide statistical data on the prevalence of violence against women, including sexual and domestic violence, and more specifically, on the number of complaints relating to violence against women, on the related investigations, prosecutions, and penal sanctions and on the compensation provided to victims.

12. With reference to the Committee's previous concluding observations (para. 22), please provide information on what further measures the State party has taken to prosecute and punish trafficking in persons, especially in women and children. Please also inform the

<sup>3</sup> CPT/Inf (2008)31.

<sup>4</sup> Ibid., paras. 12-13.

<sup>5</sup> Ibid., para. 21.

<sup>6</sup> Ibid., para. 18.

<sup>7</sup> Ibid., para. 38.

<sup>8</sup> Ibid., para. 19.

<sup>9</sup> Ibid., para. 20.

<sup>10</sup> The same recommendation was made by CAT in its previous concluding observations (para. 19).

Committee on what measures have been undertaken to intensify the efforts of the State party to provide victims with recovery and reintegration services.

13. Please provide updated statistical data on human trafficking since the consideration of the previous report, including the number of complaints relating to human trafficking, and of the related investigations, prosecutions, convictions and sanctions, as well as on compensation provided to victims. Please also provide updated statistics on the number of children and adults involved in trafficking.

### **Article 3**

14. In the light of the concern expressed by the Committee in its previous concluding observations (para. 8), please provide information on whether measures have been taken to improve the functioning of the system for processing and determining asylum claims, especially with respect to those claims channelled through the so-called “accelerated procedure”. More specifically, please also provide information on whether measures have been taken to ensure thorough review of each individual asylum claim, that effective remedies are available to challenge the outcome of such decisions and that such remedies have the effect of suspending the execution of the decision not to grant asylum (*ibid.*). Please also provide information on how many cases have been appealed and their outcome.

15. In the light of the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW/MKD/CO/3, para. 30), please provide information on whether measures have been taken to integrate a gender-sensitive approach throughout the process of granting asylum/refugee status, including in the application stage.

16. In its previous concluding observations (para. 9), the Committee expressed its concern about the case of Khaled El-Masri. Please provide information on measures undertaken to clarify the arrest, detention and transfer to a third country of Mr. El-Masri in order to assess whether the treatment of Mr. El-Masri has been in compliance with the Convention and other human rights standards. Please also provide detailed information on the investigation of the case and its results.

17. Please provide detailed statistical data disaggregated by age, sex and nationality, since the second periodic report of the State party as regards:

(a) The number of asylum requests registered, within the territory and at the border points, the number of applicants to whom refugee status was granted, the number of complaints lodged and their outcome per instance;

(b) The number of prevented attempts of illegal crossing and the number of aliens detected inside the territory who managed to illegally cross the national border or stay illegally;

(c) The number of decisions for temporary detention of an alien in the Gazi Baba detention centre of the Ministry of the Interior, disaggregated by legal grounds for temporary detention, the number of complaints lodged against these decisions and duration of stay in detention;

(d) The number of expulsion decisions, disaggregated by legal grounds for expulsion, and the number of complaints lodged against these decisions, their outcome and the countries of return.

18. Please provide information on the steps taken by the State party to fulfil its non-refoulement obligations and, more specifically, to ensure that all elements of an individual case are considered and all procedural guarantees are guaranteed, in practice, to the person expelled, returned or extradited. Please also provide information on the steps taken to

ensure that the competent authorities strictly observe article 3 of the Convention, in particular when asylum is denied to or revoked from a person because he or she is deemed to constitute a danger to the security of the country, and on the safeguards in place to prevent non-refoulement, such as an opportunity for aliens to submit evidence to refute allegations that they constitute a danger to the security of the country, including before an appeal body. Please also inform the Committee of any cases/decisions where the authorities did not proceed with expulsion due to fear that the person might be subjected to torture, inhuman degrading treatment or punishment.

19. Please provide information on the steps taken to appoint a guardian to unaccompanied minors who have crossed the national borders illegally and who do not apply for asylum. Are guardians appointed immediately upon the identification of such minors inside the territory? Please also provide information on whether those children are separated from adults and/or kept in special facilities. Also, is there in the State party a practice of detaining minors?

### **Article 5**

20. Further to the previous concluding observations of the Committee (para. 11), please provide information on any steps taken to abolish the double criminality requirement for the crime of torture and apply the *aut dedere aut judicare* principle when an alleged offender for acts of torture committed abroad is present in the territory of the State party.

### **Articles 6-9**

21. In its previous concluding observations (para. 12), the Committee welcomed the State party's ratification of the Rome Statute of the International Criminal Court but expressed its concern about the bilateral agreement concluded with another State party aimed at exempting the latter's nationals present in the State party's territory from being extradited to the Court for crimes within the jurisdiction of the Court, including torture. Please provide information on the measures taken to review the relevant terms of those agreements which prevent the nationals of certain States who are on the territory of the former Yugoslav Republic of Macedonia from being brought before the International Criminal Court.

22. Please provide information on steps taken to investigate cases of disappearances occurred during the conflict in 2001, including those related to the four cases referred back to the State party from the International Criminal Tribunal for the Former Yugoslavia, and to prosecute and punish the perpetrators of this crime. Please also provide information on the results of these investigations. Please also provide detailed information on the measures taken to enhance cooperation with the International Criminal Tribunal for the Former Yugoslavia.

### **Article 10**

23. In its previous concluding observations, the Committee expressed its concern about the lack of training programmes for medical personnel on the identification and documentation of cases of torture and on rehabilitation (para 14). Please provide information on any measures taken:

(a) To ensure that training and education of all law enforcement personnel are conducted on a regular basis (para. 14 (a));

(b) To improve training modules for medical doctors on how to identify signs of torture and cruel, inhuman or degrading treatment (para. 14 (b)). Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)? If not, will the State party consider including this in its training programmes?

(c) To regularly evaluate the training provided to law-enforcement officials, and ensure regular and independent monitoring of their conduct (para. 14 (c));

(d) To strengthen a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment (para. 14 (d)).

24. Please provide updated information on whether measures have been taken to conduct nationwide awareness-raising campaigns and training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation.

## **Article 11**

25. Please provide detailed information on the measures taken to improve material conditions of detention, to solve the problem of overcrowding in prisons (para. 15) and to protect and guarantee the rights of vulnerable people deprived of their liberty, especially Roma.<sup>11</sup> Please also provide updated information, including statistics, disaggregated by sex, age and ethnicity, on the number of detainees in detention facilities.

26. In the light of the recommendations made by the Committee in its previous concluding observations (para. 15), please provide information on the measures taken to ensure the implementation of the penitentiary system reform, including the establishment of a new network of penitentiary institutions as envisaged in the Law on Execution of Sanctions.

27. Please inform the Committee about any other measures and procedures in place for ensuring the systematic review of interrogation rules, instructions, methods and practices as well as arrangements for custody, and update the Committee on any outcome of such initiatives.

## **Articles 12 and 13**

28. In the light of the concern expressed by the Committee in its previous concluding observations (para. 16) about allegations of torture and cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel, please provide detailed statistical data, disaggregated by crime committed, age, sex and ethnicity, on complaints relating to torture or cruel, inhuman or degrading treatment or punishment allegedly committed by law enforcement officials.

29. Please provide updated information on whether measures have been taken by the State party to carry out prompt and impartial investigations into all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment committed by law enforcement officials, including those committed by members of the “Alfi” unit, and to

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<sup>11</sup> See also European Commission against Racism and Intolerance, “Report on the former Yugoslav Republic of Macedonia”, April 28, 2010, section VI.

carry out prosecution when appropriate. Please also provide information on whether the envisaged termination of the Alfi unit's activities has taken place, and if this has not happened, please explain the reasons for this and plans for termination (para. 16).

30. Please provide information on any investigation and disciplinary or criminal proceedings related to alleged torture or cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel and their outcome.

31. Further to the Committee's previous concluding observations (para. 16 (b)), please provide updated information on whether measures have been taken by the State party to ensure that the laws and regulations relating to the use of force and weapons by law enforcement officials are consistent with internationally recognized standards.

32. In the light of the recommendations made by the CPT in the report on its visit to the former Yugoslav Republic of Macedonia in July 2008, please indicate any measures taken:

(a) To ensure that every newly arrived prisoner is properly interviewed and physically examined by a medical doctor or a qualified nurse as soon as possible after admission, especially insofar as remand establishments are concerned, and that those requirements are clearly reflected in the State party's legislation;<sup>12</sup>

(b) To ensure that medical confidentiality is fully guaranteed in all prison establishments and consequently that all medical examinations of prisoners are conducted out of the hearing and—unless the doctor concerned requests otherwise in a particular case—out of the sight of the prison officers;<sup>13</sup>

(c) To draw up a comprehensive strategy for the provision of assistance to all prisoners with drug-related problems, as one aspect of a national drugs strategy.<sup>14</sup>

(d) To improve the screening of all persons entering and leaving prisons.<sup>15</sup>

## Article 14

33. Please provide detailed information on the measures taken to ensure and to guarantee that victims of torture or ill-treatment have the right to obtain redress and fair and adequate compensation, as provided for in article 14. Please include the number of requests filed, existing assistance in relation to filing requests, the number of requests that have been granted, and what kind of redress has been ordered or provided, including means for the fullest possible rehabilitation.

34. In the light of the recommendations made by the Committee in its previous concluding observations, please provide information on the measures taken to ensure that appropriate services are available in practice for the rehabilitation of victims of torture (para. 17). Is there any system in place for evaluating the outcome of rehabilitation services to this group?

## Article 15

35. In its previous concluding observations, the Committee expressed its concern about the lack of clear legislation totally excluding admission of evidence obtained as a result of

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<sup>12</sup> CPT/Inf (2008)31, para. 23.

<sup>13</sup> *Ibid.*, para. 24.

<sup>14</sup> *Ibid.*, para. 25.

<sup>15</sup> *Ibid.*, para. 27.

torture (para. 18). Please inform the Committee on the concrete measures taken to prohibit, both in legislation and in practice, the admissibility and use in criminal proceedings of any evidence obtained as a result of torture or ill-treatment, in compliance with article 15 of the Convention. Please provide examples of any cases that have been dismissed by courts due to the introduction of evidence obtained through torture or ill-treatment.

## Article 16

36. In its previous concluding observations, the Committee expressed its concern about the intolerance and hatred towards ethnic minorities, especially Roma (para. 20).<sup>16</sup> Please provide detailed information on decisions and measures taken by the State party to strengthen its efforts to combat ill-treatment of and discrimination against persons belonging to ethnic minorities, in particular Roma, including by ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and information campaigns continuously communicate the message that discrimination and violence will not be tolerated and will be sanctioned accordingly. Please provide information on cases that have been presented and examples of any cases that have been sanctioned.

37. Please indicate the measures taken by the State party to adopt and implement legislation prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and public education measures (para. 21).<sup>17</sup>

38. In the light of the recommendations made by the CPT in the report on its visit to the former Yugoslav Republic of Macedonia in July 2008, please indicate measures taken by the State party:

(a) To ensure that truncheons are removed from the premises of the Educational-Correctional Institution;<sup>18</sup>

(b) To comply with the criteria defined by the CPT on the use of means of mechanical restraint;<sup>19</sup>

(c) To issue clear guidelines to all prisons to ensure appropriate mental health assessment and care for persons at risk of self-harm or suicide;<sup>20</sup>

(d) To issue guidelines also in respect of juveniles and children providing for educational and other activities;<sup>21</sup>

(e) To put an end to alleged mistreatment by law enforcement officials, consisting mostly of kicks, punches, and blows with batons or the butts of pistols;<sup>22</sup>

(f) To strengthen the effectiveness of the safeguards against ill-treatment.<sup>23</sup>

39. In the report on its 2006 visit to the former Yugoslav Republic of Macedonia, the CPT expressed concern in relation to the treatment and conditions offered to residents of

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<sup>16</sup> See also European Commission against Racism and Intolerance, "Report" (note 11 above), sect. VI.

<sup>17</sup> See also the concluding observations of the Committee on the Rights of the Child (CRC/C/MKD/CO/2), paras. 40-41.

<sup>18</sup> CPT/Inf (2008)31, para. 14.

<sup>19</sup> Ibid., para. 15.

<sup>20</sup> Ibid., para. 16.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid., paras. 31 and 34.

<sup>23</sup> Ibid.

Demir Kapija Special Institution for mentally disabled persons and it is still awaiting information on the outcome of the investigations into the deaths of several residents in this institution.<sup>24</sup> Please provide information on the measures taken to improve the conditions offered to residents in institutions for mentally disabled persons, and in particular in the Demir Kapija Special Institution for mentally disabled persons, and to prevent suicide in those institutions, as well as information on the outcome of the above-mentioned investigation.

### **Other issues**

40. During the consideration of the previous periodic report, the State party informed the Committee that a draft bill on ratification of the Optional Protocol to the Convention was under Governmental review (para. 23). In this respect, please inform the Committee on the steps taken to ratify the Optional Protocol to the Convention.

41. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

42. As recommended by the Committee in its previous concluding observations (para. 24), please provide information on whether the State party has ratified any of the following human rights treaties: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

43. Please provide information on the measures taken to strengthen the judiciary as regards its independence, budgetary framework, human resources and efficiency.<sup>25</sup>

### **General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

44. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

45. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

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<sup>24</sup> Ibid., para. 1.

<sup>25</sup> European Commission, "The former Yugoslav Republic of Macedonia: 2008 progress report" (SEC(2008) 2695), 11 May 2008, pp. 61-62.

46. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations, since the consideration of the previous periodic report in 2006, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.

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