

REFORMS VERSUS RIGHTS



ANALYSIS OF IMPLEMENTATION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS (2013-2016)*

This analysis of implementation of the European Court of Human Rights' judgments (2013-2016) represents a follow-up study to the previous analysis titled "The Judgments Ought To Be Implemented – Analysis of Implementation of the European Court of Human Rights' Judgments in the Republic of Macedonia" (covering the period from the start of the Republic of Macedonia's obligation until the end of 2012).

ECTHR'S RECOMMENDATIONS IN THE PERIOD UNTIL 2012

In the case of the Republic of Macedonia, recommendations made by the European Court of Human Rights' (ECtHR) in the period until 2012 concerned the **need for numerous changes to national laws and bylaws.**

THE RECOMMENDATIONS CONCERNED INTEGRAL CALCULATION OF DEADLINES IN COURT PROCEEDINGS, INACTIVITY AND INCONSISTENCY ON THE PART OF COURTS, DECLARATIVE ADOPTION OF LEGISLATIVE CHANGES, SERIOUS SHORTFALLS IN THE LEGAL SYSTEM, THE NEED TO INTRODUCE PRECISE

PROCEDURES ON INDEPENDENT INVESTIGATION, LEGAL PROVISIONS GOVERNING CONFLICT OF INTERESTS AND INFLUENCES, THE NEED TO ENFORCE COURT RULINGS, LACK OF EFFECTIVE LEGAL REMEDIES, ESTABLISHMENT OF RULES ON ADMITTANCE OF EVIDENCE IN COURT PROCEEDINGS, USE OF DETENTION ORDERS AS MEASURE OF LAST RESORT, AND RECOMMENDATIONS RELATED TO THE FREEDOM OF EXPRESSION AS CRUCIAL ELEMENT OF PLURALISM.

* This text represents a summary of the key findings and recommendations of the analysis. Full version of the analysis is available [here](#)

ECTHR'S RECOMMENDATIONS IN THE PERIOD 2013–2015

In spite of ECtHR's recommendations, in the period 2013–2015 the relevant authorities adopted **insignificant number of changes to relevant legislation**, aimed to implement recommendations put forward as part of ECtHR's judgments. Absence of relevant legal changes aimed to address these problems is an indicator of inefficient operation on the part of the Interdisciplinary Commission.

Notwithstanding the fact that, as part of its judgments, ECtHR referred to the need for legal changes, the Law

on Public Prosecution Office and the Law on Courts remained intact in the analysed period. Changes were made to the Law on Litigation Procedure, the Law on Criminal Proceedings, the Criminal Code and the Law on Police, accompanied with adoption of two new pieces of legislation that could be put in the context of recommendations made as part of ECtHR's judgments, i.e. the Law on Determining Type and Amount/Duration of Sanctions and the Law on the Council for Establishment of Facts and Initiation of Liability Procedure for Judges.

REPEATED AND NEW ECTHR'S RECOMMENDATIONS AND REMARKS

Having in mind ECtHR's recommendations and remarks and legal changes made in the period after their issuance, it can be concluded that adopted changes rarely imply implementation of said recommendations. In the period 2013–2016, ECtHR's judgements featured **repeated and new recommendations and remarks**.

IN ADDITION, THESE RECOMMENDATIONS IDENTIFY THE SUPREME COURT AS SOURCE OF LEGAL INSECURITY, THE PROBLEM RELATED TO DEPRIVATION OF LIBERTY ON THE GROUNDS OF UNSETTLED DEBTS AND INDICATE THE LACK OF ADEQUATE INDEMNITY IN CASES OF ILLEGAL DEPRIVATION OF LIBERTY AND THE LACK OF COURT HEARINGS.

INEFFICIENT PERFORMANCE OF THE INTERDISCIPLINARY COMMISSION – BODY OF GREATER INDEPENDENCE IS NEEDED

In the period from 2013 to date, several institutional changes were made to the structures tasked with enforcement of ECtHR's judgements. The biggest changes in that regard were observed with the Interdisciplinary Commission. One of key competences entrusted to the Interdisciplinary Commission is to identify problems underlined in ECtHR's judgements or related to their implementation, to initiate legislative change and to monitor enforcement of said changes. Absence of relevant legal changes aimed to address these problems is an indicator on inefficient operation of this commission.

WITH A VIEW OF ENSURING MONITORING AND IMPLEMENTATION OF ECTHR RECOMMENDATIONS, SEPARATE BODY NEEDS TO BE ESTABLISHED AND TASKED TO MONITOR IMPLEMENTATION OF ECTHR'S JUDGEMENTS, WHICH SHOULD ENJOY GREATER INDEPENDENCE AND AUTONOMY IN OPERATIONS, AS WELL AS TRANSPARENCY AND PUBLIC INFORMATION ON MEASURES TAKEN IN RELATION TO IMPLEMENTATION OF ECTHR'S RECOMMENDATIONS, ESPECIALLY THOSE RELATED TO GENERAL MEASURES AIMED TO BRING ABOUT NORMATIVE CHANGES.

BUREAU FAILS TO IDENTIFY THE PROBLEM WITH LONG DURATION OF PROCEEDINGS

In the period 2013-2016, the Bureau for Representation of the Republic of Macedonia in Front of ECtHR has submitted **three reports**, which include statistical data and qualitative assessments on its performance and actions taken upon ECtHR's judgements. However, as part of its reports, the Government's Agent **does not refer to the underlying problem of excessive duration of court proceedings**. There are no separate reports on enforcement of ECtHR's judgements that would provide information not only on indemnities paid, but also on individual and special measures adopted and implemented by competent bodies.

REPORTS DEVELOPED AND SUBMITTED BY BODIES RESPONSIBLE FOR ENFORCEMENT OF ECtHR'S JUDGEMENTS SHOULD CONTAIN CRUCIAL INFORMATION ON ISSUED RECOMMENDATIONS AND GUIDELINES, ANALYSES THAT REFLECT ON THE ACTUAL SITUATION IN TERMS OF REPETITION OF PARTICULAR VIOLATIONS MADE TO ECHR, INITIATIVE ON NORMATIVE AND PRACTICAL CHANGES AND PROGRESS ACHIEVED BY THE STATE IN PROTECTION OF HUMAN RIGHTS AND FREEDOMS.

RECOMMENDATIONS

In that regard, it is necessary to introduce the rule on **"unity of all proceedings"**, according to which both pre-trial and enforcement procedures are integral part of court proceedings. The possibility for unlimited number of "re-trials" whereby court proceedings are returned for repeated decision-taking by the lower instance court also leaves space for extended duration of court proceedings and brings under question the efficiency of legal remedies made available to the citizens.

It is needed to introduce the principle on **"limited re-trial"** references from higher to lower instance courts, while at the level of by-laws it is necessary to introduce the **"next day" principle** which guarantees continuation of main hearings within the shortest possible deadline.

Procedural laws need to be amended in the sphere of rules governing collection, examination and admission of evidence and rules on witness selection and their cross-examination. Moreover, **changes are needed to legal regulations applicable in investigation of cases with indications for torture**, i.e. violation of Article 3 from ECHR.

Additional legislative changes are needed, especially in the Law on Police, in relation to establishment of **professional standards, adequate training, recruitment and selection**, as well as the system on accountability.

ECTHR'S JUDGEMENTS AGAINST THE REPUBLIC OF MACEDONIA IN THE PERIOD 2013-2016

ECTHR's judgements can be of great assistance, both in terms of identifying systemic weaknesses and in establishing new relations among particular judicial structures, judicial authorities and other state administration bodies and the civil society as part of the control mechanism.

In the period 2013-2016, ECtHR has taken judgements against the Republic of Macedonia establishing violation of Articles 2, 3, 5, 6, and 8 from the European Convention on Human Rights and violation of Article 1 from Protocol no. 1 to the Convention.

1] Cases in which ECtHR established violations of Articles 2 and 3 of the European Convention on Human Rights:

Kitanovski v. Republic of Macedonia (excessive use of police powers and endangerment of life); **Hajrulahu v. Republic of Macedonia** (torture and extortion of confession statement); **Andonovski v. Republic of Macedonia** (expedite sentencing on the ground of physical fighting with police officer and his neighbour); **Aslani v. Republic of Macedonia** (abuse of police powers); and **Ilievska v. Republic of Macedonia** (handcuffing and use of physical force during patient's transfer to the hospital).

2] Cases in which ECtHR established violation of Article 5 from the European Convention on Human Rights:

Velinov v. Republic of Macedonia (misdemeanour sanction for traffic offence, although the fine was paid, it was replaced with imprisonment sentence); and **Miladinovi v. Republic of Macedonia** (extended detention until adoption of the first-instance ruling, in duration of one year).

Specificities of cases and judgements: IT SHOULD BE NOTED THAT CASES RELATED TO VIOLATION OF ARTICLE 2, 3 AND 5 FROM THE EUROPEAN CONVENTION INCLUDE VIOLATION TO PROCEDURAL OBLIGATIONS FOR EFFICIENT INVESTIGATION ON THE PART OF THE STATE, STRONG TREND ON FREQUENT VIOLATION OF THE CONVENTION IN REGARD TO ENDANGERMENT OF LIFE WITH UNJUSTIFIED USE OF DEADLY FORCE AND ABUSE AND ALLEGED INVESTIGATIONS IN ABUSE AND EXCESSIVE USE OF POWERS THAT HAVE BEEN PROLONGED TO THE LEVEL OF ABSOLUTE EXPIRATION OF THE STATUTE OF LIMITATIONS.

3] Cases in which ECtHR established violation of Article 6 from the European Convention on Human Rights:

Papadakis v. Republic of Macedonia (inability for the defence to cross-examine and confront the key protected witness); **Balazoski v. Republic of Macedonia** (distortion of legal security because the Supreme Court has rejected the ruling review as inadmissible); **Stoilkovska v. Republic of Macedonia** (indemnity for the employer on the principle of objective responsibility, which had not been established in five other identical cases); **Iljazi v. Republic of Macedonia** (court ruling based on indirect evidence, without presentation of testimonies given by defence witnesses); **Dusko Ivanovski v. Republic of Macedonia** (lack of equality due to non-admission of witnesses proposed by the defence and due to lack of objective impartiality); **Mitrinovski v. Republic of Macedonia** (lack of impartiality in proceedings related to job dismissal by the Judicial Council); **Poposki&Duma, Jaskoski&Trifunovski and Gerovska-Popcevska v. Republic of Macedonia** (lack of impartiality in proceedings related to job dismissal by the Judicial Council); **Nikolova v. Republic of Macedonia** (undue course of non-litigation proceedings on establishing reimbursement for expropriated land);

Eftimov v. Republic of Macedonia (long duration of criminal proceedings against the applicant in relation to medical doctor's error); *Mitkova v. Republic of Macedonia* (long duration of administrative procedure in relation to reimbursement of costs for medical treatment abroad and lack of public hearing before the Administrative Court); and *Ivanovski v. Republic of Macedonia* (procedure in terms of fair trial as a whole in relation to the lustration procedure and decision).

Specificities of cases and judgements: ECTHR CONTINUED TO ESTABLISH VIOLATIONS OF DIFFERENT ASPECTS OF ARTICLE 6 FROM THE EUROPEAN CONVENTION IN CASES OF VARIOUS TYPES AND ISSUES. VIOLATIONS OF THE RIGHT TO FAIR TRIAL, IN ALL ITS ASPECTS, ARE THE MOST FREQUENT GROUNDS INDICATED IN APPLICATIONS MOTIONED AGAINST THE REPUBLIC OF MACEDONIA IN FRONT OF THE COURT IN STRASBOURG. SPECIFIC FEATURE OF THESE CASES IS THE FACT THAT THEY OFTEN INDICATE THE NEED FOR REPEATED TRIAL AS INDIVIDUAL MEASURE THAT WOULD TRULY AND ADHERENTLY ENFORCE THE JUDGEMENT IN RELATION TO THE APPLICANT THAT IS DIRECTLY AFFECTED.

4) *Cases in which ECtHR established violation of Article 8 of the European Convention on Human Rights:*

Popovski v. Republic of Macedonia (violation of the state's positive obligation to provide effective protection of the applicant's reputation); *Mitovi v. Republic of Macedonia* (violation of the state's positive obligation in relation to the father's right to contact with his child); and *Ivanovski v. Republic of Macedonia* (the first judgement upon lustration case in which, in addition to violation of Article 6, the Court has also established violation of Article 8 from the European Convention because the lustration process stipulated too broad restrictions on the applicant's employment possibility).

Specificities of cases and judgements: INTER ALIA, THESE CASES ALSO REFLECT ON THE VIOLATION OF THE RIGHT TO PRIVATE LIFE, INDEPENDENTLY WHETHER SUCH VIOLATION WAS MADE ON THE PART OF THE STATE OR BY OTHER INDIVIDUALS, WITH THE STATE FAILING TO OPPOSE SUCH VIOLATION.

5) *Cases in which ECtHR established violation of Article 1 from Protocol no.1 to the European Convention on Human Rights:*

Stojanovski and Others v. Republic of Macedonia (denationalization procedure and prevented return in possession); *Arsovski and Others v. Republic of Macedonia* (violation of property rights in expropriation); *Andonoski v. Republic of Macedonia* (deprived right to possession of vehicle); and *Mitevski v. Republic of Macedonia* (payment of lease for formerly social housing that had been privatized in the meantime).

Specificities of cases and judgements: PROMINENT CHARACTERISTIC OBSERVED IN THESE CASES INVOLVES THE VIOLATION OF THE RIGHT TO POSSESSION AND THE MOST RECENT APPROACH APPLIED BY ECTHR IN RELEVANT CASES FROM MACEDONIA, WHICH BRINGS TO SURFACE ON-GOING ISSUES RELATED TO INFRINGEMENT OF PRIVATE PROPERTY, WHICH WAS NOT OBSERVED IN THE PERIOD UNTIL 2013, EXCEPT IN RELATION TO DISSOLUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA.

