

**Information provided by the Government of North Macedonia as contribution to the Report of the Special Rapporteur on Torture on the topic of „ The duty to investigate crimes of torture in national law and practice”**

**In reply to the letter and Questionnaire of the Special Rapporteur on Torture of 2 November 2022, the Government of North Macedonia provides the following information:**

(i) With regards to the challenges, impediments and obstacles to effective national investigations and prosecutions of acts of torture, it is important to point out that a Project supported by the Council of Europe was implemented in the past period. This project contained two components: criminal and civil control. The segment of criminal - legal and civil control is operationalized by a set of laws that were adopted by the Assembly of Republic of North Macedonia.

The reason for these measures is that in practice there were cases of torture committed by members of the police who, unfortunately, did not receive a legal resolution in the Republic of North Macedonia, primarily due to the failure of the internal control within the Ministry of Internal Affairs and the failure of the public prosecution. All this resulted in applications before the European Court of Human Rights in Strasbourg, where a violation of the European Convention on Human Rights was established in these cases.

In order to overcome these situations, in the package of laws from the criminal and legal area that were adopted by the Assembly of Republic of North Macedonia in 2018, a special department was established within the Primary Public Prosecutor's Office for the prosecution of organized crime and corruption with specialized public prosecutors who shall act upon this type of cases. Furthermore, a significant novelty is that these cases are no longer handled by the internal control within the Ministry of Internal Affairs, the investigation is led only by the public prosecutor and the investigators in the Public Prosecutor's Office. This competence is also followed by the judiciary, with the prescribed competence for acting upon these cases by the Department that judges acts of organized crime and corruption within the Primary Court Skopje I Skopje.

In the part referring to the civil component, amendments were made to the Law on the Ombudsman. Namely, the Law stipulates that the Ombudsman together with representatives of non-governmental organizations (associations) takes actions and measures to ensure support and protection of the victims, their rights and presentation of their interests in all procedures and cases defined by this law. For this purpose, the Ombudsman forms a special organizational unit - the Ombudsman - a mechanism for civil control.

In addition, with the Law on Public Prosecution of 2020, a specialized department for the prosecution of crimes committed by persons with police powers and members of the prison police was established in the Primary Public Prosecutor's Office for Prosecution of Organized Crime and Corruption. The specialized department is competent to act upon:

- criminal offences committed by persons with police powers and members of the prison police while performing official duties and powers,

- criminal offences committed outside the service with the use of serious threat, force or means of coercion resulting in death, serious bodily injury, bodily injury, unlawful deprivation of freedom, torture and other cruel, inhuman or degrading treatment and punishment if *ex officio* criminal prosecution is stipulated by law.

**(ii)** The existing Criminal Code, prescribes the criminal offences “Torture and other cruel, inhuman or degrading treatment and punishment” Article 142 and “Harassment in the performance of the service” Article 143. Namely, in Article 142 it is prescribed that the person who, in the performance of the service, as well as the person ordered by an official or on the basis of their consent, shall use force, threat or other inadmissible means or inadmissible way with the intention of extorting a confession or some other statement by the accused, witness, expert or other person, or shall cause severe physical or mental suffering to another person in order to punish them for a criminal offence committed or suspected to have been committed by them or another person, or to intimidate or coerce them of giving up any of their rights, or causes such suffering due to any form of discrimination, shall be punished by term of imprisonment from three to eight years. Furthermore, should the injured party suffers serious bodily injury or other particularly serious consequence due to the criminal offence referred to in paragraph 1, the perpetrator shall be punished with term of imprisonment for at least four years.

With regards to the criminal offense Harassment in the performance of the service (Article 143 of the Criminal Code), the Criminal Code stipulates that anyone who in the performance of the service harasses, intimidates, insults another person or in general acts towards them in a way that degrades the human dignity and the human personality, shall be punished with term of imprisonment from one to five years.

In order to eliminate the identified weaknesses in practice, modifications and amendments were drafted to the Criminal Code in this area, which are to be adopted in a parliamentary procedure. Namely, in the mentioned draft law, a redefinition of the mentioned criminal offences is proposed, whereby for the criminal offence “Torture and other cruel, inhuman or degrading treatment and punishment”, Article 142 the title shall be “Torture”. The following shall be stipulated in the legal matter:

“(1) The one who, in the performance of their capacity or any other person acting in an official capacity, as well as a person who, encouraged by an official or with their express or tacit consent, by the use of force, threat or any other illegal means or in any inadmissible way, shall cause physical or mental pain or suffering to another person in order to obtain from them or a third party a confession or some other information or to punish them for an act that they or a third person has committed or is presumed to have committed, shall be punished with term of imprisonment for at least five years. Should the criminal offence referred to in paragraph (1) of this Article result in serious bodily injury, other particularly serious consequences or death of the victim, or the crime is committed out of hatred, the perpetrator shall be punished with term of imprisonment for at least eight years. Should the perpetrator intentionally cause serious bodily injury by committing the criminal offense referred to in paragraph (1) of this Article, the perpetrator shall be punished with term of imprisonment for at least ten years. Should the perpetrator intentionally cause death of the victim while committing the criminal offence referred to in paragraph (1) of this Article, the perpetrator shall be punished with term of imprisonment for at least ten years or with life imprisonment.”

In relation to the criminal offense Harassment in the performance of the service, Article 143 has been amended where “an official who, in the performance of their capacity or any other person acting in an official capacity, as well as a person who, encouraged by an official or with their express or tacit consent, uses unauthorized force, threatens or commits physical or mental violence in order to inflict physical or mental pain or suffering on another person, which constitutes cruel, inhuman or degrading treatment or punishment, shall be punished with term of imprisonment from three to eight years.”

In addition, the novelty in the Draft Law is very important, which proposes the criminal offences “Torture” Article 142 and “Harassment in the performance of the service” Article 143 not to expire.

**(iii)** In the Law on Public Prosecution, the Public Prosecutor in the Specialized Department for Prosecution of Crimes committed by persons with police powers and members of the prison police manages the preliminary procedure and undertakes the actions independently or through public prosecutor’s investigators. It is also prescribed that the public prosecutor capacity is incompatible with the performance of another public capacity or profession, except in cases determined by law or with membership in a political party or participation in the activities of a political party. In Article 7 of the same Law, it is prescribed that the Public Prosecutor performs the function lawfully, impartially and objectively, respects and protects the freedoms and rights of the man and the citizen and the rights of other legal entities and, within their powers, takes care of the efficiency of the criminal prosecution. At the same time, the Public Prosecutor, in the exercise of their capacity, ensures the equality of citizens before the law regardless of race, skin colour, origin, national or ethnic affiliation, sex, gender, sexual orientation, gender identity, belonging to a marginalized group, language, citizenship, social origin, education, religion or religious belief, political belief, other belief, disability, age, family or marital status, property status, health status, personal characteristic and social status or any other basis. Paragraph 3 of the mentioned Article stipulates that no one can influence the legal, impartial and objective performance of the capacity of the Public Prosecutor's Office.

**(iv)** Pursuant to Article 33 paragraph 5 of the new Law on Public Prosecution of 2020, the organizational unit in the Ministry for Internal Affairs competent for executing internal control and professional standards and the other competent bodies take actions for initiating disciplinary procedure with regards to the matters referred to in paragraph (1) of this Article, after the approval of the competent public prosecutor from the specialized Department for Prosecution of Crimes committed by persons with police powers and members of the prison police, in accordance with paragraph (2) of this Article.

This provision stipulates that until the Public Prosecutor takes all the necessary actions within the investigation, the organizational unit in the Ministry of Internal Affairs responsible for performing internal control and professional standards cannot take actions within their competence for disciplinary proceedings before receiving approval from the Public Prosecutor, all in order not to disrupt the investigation.

**(v)** Regarding the issue related to the victims of torture, the Law on Criminal Procedure in relation to the rights of the victims provides for the right to participate in the criminal procedure as a victim by

joining the criminal prosecution or for the realization of the property legal claim for damage, to special care and attention by the authorities and entities participating in the criminal proceedings and effective psychological and other professional assistance and support by the authorities, institutions and organizations for assistance to victims of crimes. Paragraph 2 stipulates an obligation for the police, the public prosecutor and the court to act with special care towards the victims of crimes, giving them lessons from paragraph (1) of this Article and Articles 54 and 55 of the Law on Criminal Procedure and take care of their interests when adopting decisions on criminal prosecution against the accused, i.e. when taking actions in the criminal procedure in which the victim must be personally present, for which an official note or record is drawn up. While in paragraph 3 it is provided that in accordance with the special regulations, the victim of a crime for which a prison sentence of at least four years has been prescribed, has the right to:

1) a counsellor, compensated from the budget funds before giving a statement, i.e. a statement or submission of a property legal claim, if there are serious psychophysical damages or more serious consequences of the crime; and

2) compensation for material and immaterial damage from a state fund under conditions and in a manner prescribed by a special law, if the compensation for damage cannot be provided by the convicted person.

Also, Article 54 guarantees special rights to vulnerable categories of victims, so that victims have the right to special measures of procedural protection during the testimony and the examination in all stages of the procedure, if:

1) at the time of giving the statement, they are under 18 years of age;

2) by giving a statement or answering a certain question, they would expose themselves or a close person to a serious danger to life, health or physical integrity (endangered victims); and

3) due to the age, nature and consequences of the criminal offence, physical or mental disability or other significant health condition, social and cultural past, family circumstances, religious beliefs and ethnicity of the victim, the behaviour of the accused, family members or friends of the accused towards the victim, there would be harmful consequences to their mental or physical health or it would negatively affect the quality of the given statement (especially when it comes to sensitive victims).

These special measures of procedural protection are determined by the court at the proposal of the public prosecutor or the victim or at their own discretion, when it is necessary to protect endangered and particularly sensitive victims.

When deciding on the determination of the special measures for procedural protection referred to in paragraph (2) of this Article, the court must take into account the will of the victim. The court must determine a special measure of procedural protection in the cases referred to in paragraph (1) point 1 of this Article, namely:

1) when a child victim needs special care and protection; or

2) when a child is a victim of human trafficking, violence or sexual abuse.

In particular, the implementation of special measures for the procedural protection of child

victims is regulated by a special law, i.e. the Law on Justice for Children.

The Law on Criminal Procedure, among other things, also regulates the special rights of victims of crimes against gender freedom and gender morality, humanity and international law. Hence, the victim of crimes against gender freedom and gender morality, humanity and international law, in addition to the rights referred to in Article 53 of this Law, has the following rights:

- 1) before the examination, to speak with a counsellor or a proxy for free, if the person participates in the procedure as a victim;
- 2) to be examined by a person of the same sex in the police and in the public the prosecutor's office;
- 3) not to answer questions that refer to the victim's personal life and that are not related to the crime;
- 4) to request an examination using visual-audio means in a manner determined by this law; and
- 5) to request the exclusion of the public from the main hearing.

The court, the public prosecutor's office and the police are obliged to educate the victim about these rights, at the latest before their first examination, for which they shall compile an official note or minutes.

**ENCLOSED: Relevant legal provisions of**

- 1. Criminal Code**
- 2. Law on Public Prosecution**
- 3. Law on Criminal Procedure**
- 4. Draft Law Amending the Criminal Code (In Parliamentary Procedure)**