



United Nations Human Rights Council
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ICJ Submission to the Universal Periodic Review of
“The Former Yugoslav Republic of Macedonia”

November 2008

The International Commission of Jurists (ICJ) welcomes this opportunity to submit its comments to the Universal Periodic Review (UPR) of “the Former Yugoslav Republic of Macedonia”. In this submission the ICJ wishes to draw the Working Group on the UPR’s and the Human Rights Council’s attention to the frequent allegations of ill-treatment by police either during arrest or in police custody, and the lack of adequate investigations into such allegations. In addition, the Working Group should address the Macedonian Government’s failure to provide for a thorough and independent investigation into the detention at the Macedonian border of Mr Khaled El-Masri, and his subsequent transfer to Afghanistan under the CIA rendition programme.

1. Prohibition on Torture or Cruel, Inhuman or Degrading Treatment or Punishment: Prevention and Investigation

Despite clear legal prohibitions of torture and cruel, inhuman or degrading treatment or punishment in Macedonian law,¹ frequent instances of ill-treatment of suspects by police during arrest, interrogation or detention in police custody have been reliably documented, including in successive reports of the Council of Europe Committee on the Prevention of Torture (CPT) and the Council of Europe Commissioner for Human Rights.² The Human Rights Committee and the Committee Against Torture have also expressed their concerns at levels of police violence and ill-treatment during interrogations, in particular against Roma suspects.³ There have been particularly numerous allegations of violence and ill-treatment by the non-uniformed Special Mobile Police Units (“Alfa”), which operate in the Skopje area.⁴ The Government’s failure to

¹ Article 11 of the Constitution protects the right to physical and moral integrity and the freedom from torture and degrading treatment or punishment. Article 142 of the Criminal Code prohibits torture in interrogation; Article 143 prohibits ill-treatment by public officials.

² Report to the Government of “the Former Yugoslav Republic of Macedonia” on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 June to 3 July 2008, 4 November 2008, CPT/Inf (2008) 31; Report to the Government of the Former Yugoslav Republic of Macedonia” on the Visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 18 October 2007, 10 September 2008, CPT/Inf (2008) 22; Report by the Commissioner for Human Rights, Mr Thomas Hammarberg on his visit to “the Former Yugoslav Republic of Macedonia”, 25-29 February 2008, CommDH(2008)21.

³ Human Rights Committee, Concluding Observations on the Former Yugoslav Republic of Macedonia, CCPR/C/MKD/CO/2, 17 April 2008, para.11; Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, op cit, para.52.

⁴ 2007 Report of the CPT, para.13; Committee Against Torture, Concluding Observations on the Former Yugoslav Republic of Macedonia, CAT/C/MKD/CO/2 of 21 May 2008, para.16.

take effective preventative measures against cruel, inhuman or degrading treatment by law enforcement authorities falls short of its obligations under Article 7 of the International Covenant on Civil and Political Rights (ICCPR), Articles 2, 10 and 11 of the Convention Against Torture (CAT) and Article 3 of the European Convention on Human Rights (ECHR).

A key factor, which perpetuates ill-treatment in police custody is the failure in practice to allow for timely access to a legal counsel or other representative of his choice following arrest. Contrary to the requirements of the Macedonian Constitution and Code of Criminal Procedure,⁵ many suspects are not given the opportunity to consult their lawyer privately before their appearance in court.⁶ Prompt access to a competent lawyer, and the ability to communicate privately and effectively with a legal representative, are indispensable safeguards against coerced statements and ill-treatment in custody, and are necessary to the protection of rights under Articles 7, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and under the Convention Against Torture (CAT).⁷

The Working Group should recommend that the Human Rights Council urge the Government to take urgent measures to prevent ill-treatment in police custody including by:

- **Enhancing supervision and oversight of arrest and police detention, in particular by non-uniformed police, including the “Alfa” unit, whose operation should be suspended;**
- **Providing for prompt and independent medical examinations of detainees who allege ill-treatment, with adequate documentation of injuries;**
- **Ensuring effective review by judicial bodies or by other bodies authorised by law to exercise judicial power, of the legality, necessity and proportionality of arrest and police detention;**
- **Ensuring the prompt and effective investigation by appropriate officers, including prosecutors and judges supervising police detention, to allegations of ill-treatment by detainees;**
- **Ensuring that suspects are in practice afforded prompt, effective and confidential access to a lawyer, in accordance with the Macedonian Constitution and the Criminal Procedure Code.**

The Duty to Investigate

Ill-treatment by police during arrest, interrogation or detention is exacerbated and perpetuated by the lack of thorough, prompt and independent investigations into

⁵Constitution of the Republic of Macedonia, 2001, Article 12; Code of Criminal Procedure, Article 63.

⁶ Report of the visit of the CPT, 30 June to 3 July 2008, op cit, para.34; Report of the visit of the CPT , 14 to 18 October 2007 para.18; Report by the Commissioner for Human Rights of the Council of Europe, op cit, para.61.

⁷ The right of prompt access to a lawyer has been affirmed by the Human Rights Committee in its General Comment No. 20 (Fourty-fourth session), of 10 March 2008: Prohibition of torture and cruel treatment or punishment, para.11. Prompt access, at least within 48 hours of arrest or detention, is specified by Principle 7 of the UN Basic Principles on the Role of Lawyers.

allegations of torture or ill-treatment by police, contrary to obligations under Articles 2 and 7 ICCPR, Articles 12 and 13 CAT, and Articles 3 and 13 ECHR.⁸

A Ministry of the Interior Police oversight body, the Sector for Internal Control and Professional Standards (SICPS) and the prosecutor's office investigate complaints against the police. However SICPS is insufficiently independent from Government to meet the duty of effective and independent investigation.⁹ In practice, investigations by the prosecutor's office into allegations of police ill-treatment have been characterised by inaction and long delays.¹⁰ Where the prosecutor refers questions to SICPS this may further delay or impede the investigations.¹¹ The European Court of Human Rights has found that failures by the Macedonian prosecutorial authorities to pursue effective investigations into credible allegations of ill-treatment by police violate the right to freedom from torture or inhuman or degrading treatment under Article 3 ECHR.¹² These findings are reflected in the recent Concluding Observations of the Committee Against Torture, which expressed concern at the inadequate functioning of the public prosecution office in investigating such allegations.¹³

The Working Group should recommend that the Human Rights Council call on the Government:

To implement reforms of the prosecutorial system to ensure effective, independent and impartial investigations of allegations of torture or ill-treatment by law enforcement authorities and to ensure prosecutions in appropriate cases.

2. Renditions and Secret Detentions: the case of Khaled El-Masry

The involvement of the Macedonian Security and Counter-intelligence Service (UBK) in the secret detention and rendition¹⁴ of Khaled El-Masry has not yet been the subject of independent and thorough investigation by the Macedonian authorities, nor has Mr El-Masry received compensation or other measures of reparation in respect of his treatment. Mr El-Masry, a German national of Lebanese origin, was detained at the Macedonian border in January 2004. There is clear evidence, from aviation records, medical tests, and testimony of intelligence sources, to support his allegation that, following detention by the UBK and interrogation in a hotel in Skopje, he was driven to an airport where he was blindfolded, beaten and drugged, then transferred by CIA operatives to Kabul, where he was subjected to further interrogation and ill-treatment in

⁸ *Aksoy v Turkey*(1997) 23 EHRR 553; *Ilhan v Turkey*, App No.22277/93, 27 June 2000; HRC, General Comment 31, The nature of General Legal Obligations imposed on States Parties to the Covenant, 26/05/04, CCPR/C/21/Rev.1/Add.13, Paras.15 and 18.

⁹ Committee Against Torture, *Concluding Observations on the Former Yugoslav Republic of Macedonia*, CAT/C/MKD/CO/2, 21 May 2008, para.7.

¹⁰ Report of the Council of Europe Commissioner for Human Rights, op cit., para.56.

¹¹ *ibid*, para.57; *Dzeladinov v Former Yugoslav Republic of Macedonia*, App. No.13252/02, Judgment of 10 April 2008.

¹² *Jasar v Former Yugoslav Republic of Macedonia* Application No.69908/01, 15 February 2007, Judgment of 15 February 2007; *Dzeladinov v Former Yugoslav Republic of Macedonia*, op cit.

¹³ CAT Concluding Observations op cit para. 6; see also para.16.

¹⁴ "Renditions" or "extraordinary renditions" involve the seizure and transfer of suspects, outside of the standard legal procedures of extradition, deportation, expulsion or removal, without due process safeguards. Reports of the Canadian Commission of Inquiry into actions of Canadian Officials relating to Maher Arar, 12 December 2006, www.ararcommission.ca; Amnesty International, Partners in Crime, Europe's Role in Renditions, Eur 01/008/2006.

secret detention, and to enforced disappearance, before his eventual release in Albania in May 2004.¹⁵

The Macedonian Government has denied any involvement in Mr El-Masri's secret detention or rendition, and has maintained that he was only briefly detained for immigration purposes on his entry to the country. A Macedonian Parliamentary inquiry accepted the evidence of the Ministry of the Interior, finding no evidence that Macedonian authorities had exceeded their authority in the case.¹⁶

The inquiry of Senator Marty for the Parliamentary Assembly of the Council of Europe, which conducted extensive investigations into the case, concluded that the existing investigations by the Macedonian authorities were inadequate.¹⁷ Both the Human Rights Committee and the Committee against Torture have expressed their concern at the lack of thorough and independent investigation into Mr El-Masri's case, and have recommended that a new and thorough investigation be initiated.¹⁸ The Council of Europe Commissioner for Human Rights has made a similar recommendation,¹⁹ and the Committee on the Elimination of Racial Discrimination has also expressed its concern regarding the case.²⁰

Secret detentions and renditions such as that of Mr El-Masri involve multiple violations of human rights protected by the UN human rights treaties, including the right to liberty and security of the person (Article 6 ICCPR); the freedom from torture and cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR) and the right to an effective remedy (Article 2 para 3 ICCPR).²¹ Prolonged *incommunicado* secret detention has been found by the Committee against Torture to amount in itself to a violation of the Convention Against Torture,²² and secret detention such as that of Mr El-Masri amount to an enforced disappearance, a crime under international law.²³

¹⁵Committee on Legal Affairs and Human Rights, Council of Europe Parliamentary Assembly, "Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe Member States", Rapporteur Senator Dick Marty, 12 June 2006, Doc. 10957, paras.52-55; 92-103;119-129 and Appendix 1; Committee on Legal Affairs and Human Rights, Council of Europe Parliamentary Assembly, "Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe Member States", Rapporteur Senator Dick Marty, June 2007, paras.274 et seq.

¹⁶ Council of Europe Parliamentary Assembly Report of June 2007, op cit, para.313.

¹⁷ *ibid.*

¹⁸ Human Rights Committee Concluding Observations, op cit, para.14; CAT Concluding Observations op cit para.9.

¹⁹ Report by the Commissioner for Human Rights of the Council of Europe, op cit, paras.74-76.

²⁰ CERD Concluding Observations on the Former Yugoslav Republic of Macedonia, CERD/C.MKD/CO/7, 13 June 2007, para.12.

²¹ On violations of human rights involved in renditions, see for example, *Agiza v Sweden*, Committee against Torture, communication No.233/2003; *Alzery v Sweden* Communication No 1416/2005, Sweden 06/11/2006, CCPR/C/88/D/1416/2005

²² Committee Against Torture, Concluding Observations on the United States, CAT/C.USE.CO/2, 18 May 2006, para.17, where the Committee found that secret detention constituted *per se* a violation of the Convention Against Torture.

²³ United Nations International Convention for the Protection of All Persons from Enforced Disappearances, adopted by the UN General Assembly on 2006, Article 2. See further the UN Declaration on the Protection of all persons from Enforced Disappearance, preamble, para.3, Inter-American Convention on Forced Disappearance of Persons, Article II.

Macedonia's active co-operation in secret detentions and renditions on its territory violates both its obligations to refrain from acts of torture or cruel, inhuman or degrading treatment, and arbitrary detention, as well as its obligations to take steps to prevent the occurrence of such acts on its territory, under the ICCPR,²⁴ CAT,²⁵ and the ECHR.²⁶ Furthermore, Macedonia's international human rights obligations require that credible allegations of serious violations of rights including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and disappearances, must be subject to independent and effective investigation.²⁷ Such investigations should be capable of bringing to justice those responsible for the violation²⁸ and must be independent, thorough, and transparent. In addition to investigation, victims of renditions and secret detentions are entitled to reparation for violations of their human rights, including restitution and compensation, and measures of rehabilitation, satisfaction and guarantees of non-repetition.²⁹

The Working Group should recommend that the Human Rights Council call on the Government:

- **To institute a thorough, independent investigation of Mr El-Masri's detention in Macedonia and transfer from Macedonian territory, and the role of Macedonian intelligence in these events and if evidence of criminal offences is established, to bring to justice those responsible;**
- **To provide full reparations, including restitution and compensation, and measures of rehabilitation, satisfaction and guarantees of non-repetition to Mr El-Masri in respect of violations of his human rights for which Macedonia is responsible;**
- **To co-operate fully with international and national investigations into Mr El-Masri's case, including by providing mutual legal assistance to criminal investigations;**
- **To institute a review of laws, policies and practices regarding the compliance of the intelligence services with the international human rights obligations of the state, and the mechanisms for supervision or review of cooperation in intelligence operations with other states.**

²⁴ Articles 2, 7 and 9 of the ICCPR. UN Human Rights Committee General Comment No. 20 (Forty-fourth session) of 10 March 1992: Protection from torture or cruel, inhuman or degrading treatment or punishment); General Comment 31 of the Human Rights Committee, para. 8, 15.

²⁵ Article 2 CAT.

²⁶ *Osman v UK*, (2001) 29 EHRR 245; *X and Y v the Netherlands*, (1985) 8 EHRR 235.

²⁷ Article 12 CAT; Article 2(3) ICCPR; HRC General Comment No. 6 on Article 6 ICCPR, HRI/GEN/1/Rev. para.4; *Rodriguez v Uruguay*, CCPR/C/51/D/322/1988; *Almeida de Quinteros v Uruguay* CCPR/C/19/D/1981; ECtHR, *Aksoy v Turkey* (1997) 23 EHRR 553; *Ilhan v Turkey*, App No.22277/93, 27 June 2000.

²⁸ CAT Articles 5, 6, 12, 13; ICCPR Article 2(3); HRC, General Comment 31, The nature of General Legal Obligations imposed on States Parties to the Covenant, 26/05/04, CCPR/C/21/Rev.1/Add.13, Paras. 15, 18.

²⁹ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Human Rights Law, A/60/509/Add.1, 21 March 2006, Principle XI. HRC, General Comment 31, op cit, para.15.