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MONITORING AND TORTURE PREVENTION IN POLICE CUSTODY: THE CASE OF MACEDONIA AND SERBIA

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Executive summary

Recognizing the absolute prohibition of torture and other cruel, inhuman and degrading treatment, this thesis focuses on different monitoring and preventive mechanisms on international and national level. Initially analyzing the set-up of international instruments and mechanisms for torture prevention, it will then turn to the national systems of Macedonia and Serbia.

The purpose of the thesis is to examine the level of protection from and prevention of torture that international standards and mechanisms offer. At the same time, to examine the system for torture prevention established on national level and its compliance with international standards.

The analysis of the thesis shows that although there is a wide-spread system for torture prevention established on both national and international level, deficiencies can be encountered and there is space for improvements which will lead to a more effective fight with the phenomenon of torture.

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Introduction: Definitions and Scope

1. Understanding the problem

1.1. Police in a democratic society

The role of the police in a democratic society is a complex combination of responsibilities and authorities which are often conflicting with one another.[1] The paradox of police work can be seen in the fact that they have the main responsibility to protect basic human rights and freedoms, yet at the same time an inherent part of their effective functioning is the limitation of the same. An "ideal" democratic police would be one that creates a perfect balance of the two and is consistent with the following principles:

- "it is subject to the rule of law, embodying values respectful of human dignity, rather than the wishes of a powerful leader or party,
- It can intervene in the life of citizens only under limited and carefully controlled circumstances and
- It is publically accountable."[2]

"[P]olice discretion to deprive…people`s rights in order to protect democracy may also become a threat to democracy".[3] On the one hand, there is a thin line between acting within the limits of its lawful mandates and overstepping them involuntarily and out of negligence, due to the sensitivity of everyday issues. On the other hand, there is the temptation and ability of police officials to (ab)use the power that has been given to them by the State, either for expressing personal beliefs

[1] Police and Democracy by Gary T. Marx- *Policing, Security and Democracy: Theory and Practice* (2001) M. Amir and S. Einstein (eds.)
[2] Ibid, page 35
[3]Ibid, page 13.

and frustrations, attaining personal gain and profit, or even worse- as a "puppet" of political power. No matter the reason, the abuse of police powers has always had detrimental effect on the rights and freedoms of the individual.

One of the most sensitive and lawfully authorized interferences of the police with human rights is the mandate to deprive someone of their liberty. The exercise of this authority is predetermined in both international human rights instruments[4] and national legislation, where the common object of protection is two-fold: first, it is the physical and mental integrity and dignity of persons that must not, in any circumstances be endangered when lawful deprivation of liberty has taken place; and second, the liberty and security of persons are protected by carefully regulating the conditions and manner in which the deprivation of liberty will be performed.

1.2 Torture and ill treatment in police custody[5]

Police forces have lawful powers (which includes the use of force) to fulfill their duties and specifically determined circumstance under which they can do so. However, police practice shows that these powers are misused and abused on numerous accounts, purely as a tool to "achieve justice". Although there is a general perception that abuse by police officials happens within the police station, in many cases, ill-treatment can occur before the suspect is actually brought to police premises. The individual might face excessive use of force from the very first contact with the police, on the location of arrest and in transportation vehicles. While the location of arrest might be a public place, open to the eyes of witnesses, police transportation vehicles are a rather isolated and "convenient" place for police officers to mistreat a suspected individual, without any form of

[4]For example, article 5 of the European Convention for Human Rights (1950) or article 9 of the International Covenant for Civil and Political Rights (1976).

[5] Monitoring Police Custody (a practical guide) – Association for the Prevention of Torture, Forward by Professor Juan E. Mendez, the Special Rapporteur on Torture, January 2013

monitoring. The gravest forms of abuse, of course, happen in police premises or at times even in other secret premises, which are unknown to the public and used especially for interrogation.[6]

Professor Manfred Novak, former UN Special Rapporteur on Torture (SRT) points out that "you cannot torture negligently"[7], further explaining that torture is not in any case accidental, but is inflicted on purpose by police officials with the intention of achieving a certain goal. Torture or ill-treatment is one of the most often used techniques to extract confession or other information relevant to the criminal investigation.[8] For example in the case of *Ribitsch v. Austria*[9], the suspect was insulted and repeatedly beaten by the police officers (punched to the head and body, pulled down by the hair and had his head banged against the floor), according to his allegations with the purpose to extract information and confession. Even though ill-treatment might not always amount to torture, forms of inhuman and degrading treatment can seriously jeopardize the physical integrity of the individual or even cause psychological damages[10]. For instance, the practice of the European Court of Human Rights (ECtHR) has shown that inhuman and degrading treatment was inflicted to a suspect in police custody who was forced to stand naked in front of a window for a long period of time, without any support and with his hands handcuffed in the back, while

[6] Most often with terrorist suspects, an issue which is not discussed in this thesis, due to the different conditions and grounds for treatment of arrested terrorist suspects. More on this issue: *Legal Standards and the Interrogation of Prisoners in the War on Terror*- Woodrow Wilson International Center for Scholars, edited by Cynthia Arnson and Phillippa Strum, December 2007, available at: http://www.wilsoncenter.org/sites/default/files/LegalStandards.pdf

[7] *On Torture*- Adalah, The Legal Center for Arab Minority Rights in Israel, co-editors: Amany Dayif, Katie Hesketh, Jane Rice, June, 2012, Torture in the 21th Century Conclusions- Six Years as a Special Rapporteur on Torutre, Manfred Novak, page 22

[8] Amnesty International, one of the leading international non-governmental organizations actively working on campaign and advocacy for the prevention and ban of torture worldwide, has presented some of the forms of torture, practiced in today`s world: http://www.amnestyusa.org/news/news-item/torture-in-2014-stories-of-modern-horror

[9] *Ribitsch v. Austria, Application No. 18896/91, judgment of 4 December 1995,* pg. 12

[10] On the Court`s interpretation of inhuman and degrading treatment, see *Bouyid v. Belgium, Application No. 23380/09, judgment of November 2013 (referred to Grad Chamber)"*Treatment is considered to be "degrading" when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance"; pg. 45

continuously insulted and threatened with a weapon to his head.[11] It is most often a terrible practice of police officers to use continuous physical abuse on individuals in custody, such as in the case of *Shishkin v Russia*[12] where the suspect was subjected to severe beating (kicking and punching) on a daily basis. More importantly, the beating was not inflicted by a single police officer, but by several at the same time, encouraging each other to continue the treatment and eventually bring the suspect to confess under duress.[13] The ECtHR, decides upon the severity of the ill-treatment, whether a specific conduct of the police amounts to torture and actually represents a "deliberate inhuman treatment causing very serious and cruel suffering"[14]. The worst possible outcome of such treatment is when it results in the death.[15]

2. Scope and Structure of the thesis

2.1 Prevention from torture in police custody

With torture and ill-treatment in police custody being wide-spread phenomena of systematic nature taking place behind closed doors, its prevention is an even more complex and multifaceted issue. Sir Nigel Rodley, another former SRT, suggests that the way that leads to prevention is "the elimination of the pre-conditions for torture"[16]. In order to achieve this, efforts should be made on multiple levels, starting with ratification of international norms, standards and human rights principles that guarantee the absolute prohibition of torture in any circumstances, followed by their effective implementation on national level and providing constitutional protection from torture and consequently, its criminalization. States` policies should be of preventive character providing

[11] *Tomasi v France, Application No. 12850/87, judgment of 27 August 1992.*
[12] *Shishkin v. Russia, Application No. 18280/04, judgment of 7 July 2011*
[13] Ibid, pg. 10-12
[14] *Velkhiyev and Others v. Russia, Application No. 34085/06, judgment of 5 July 2011*
[15] *Anguelova v. Bulgaria Application No. 38361/97, also Velkhiyev and Others v. Russia 34085/06*
[16] *Reflections on Working for the Prevention of Torture* by Sir Nigel S. Rodley, Essex Human Rights Review, 6(1). page 15-21 ISSN 1756-1957, available at: http://repository.essex.ac.uk/4506/1/Rodley.pdf

police trainings that will discourage the use of torture as means and an end in itself, creating police culture that will be avert to torture and respectful of human rights. As former SRT, Professor Manfred Nowak suggests, the most important tool towards prevention of torture is the system of monitoring places of detention.[17] The importance of conducting (un)announced visits to places where deprivation of liberty has taken place is multiple: it provides direct contact with victims of torture and ill-treatment and thereby enables reporting and registering acts of torture; it leads to identifying torturers who will be later held accountable for their actions, avoiding impunity; it further instigates investigations, eases the process of collecting evidence and brings justice and reparations to victims of torture and ill-treatment.

Torture prevention in police custody is a process that does not solely depend on one individual or institution. Granting the assumption that all international standards and principles are incorporated in national legislation and policies, it is in the hands of monitoring mechanisms to challenge the conduct of police work and make sure of the proper implementation of those standards. Different monitoring mechanisms however, depending on their capacity, have different responsibilities and powers- from international (charter or treaty based) monitoring bodies, to national preventive mechanisms (NPMs), internal control services and civil society represented by non-governmental organizations.

2.2 Thesis structure

The thesis will examine the international and domestic framework for the prevention of torture in police custody. Its focus will be on three different pillars: firstly, the normative and standard setting instruments on international and domestic level which are meant as safeguards for protecting

[17] *On Torture*- Adalah, The Legal Center for Arab Minority Rights in Israel, co-editors: Amany Dayif, Katie Hesketh, Jane Rice, June, 2012, Torture in the 21th Century Conclusions- Six Years as a Special Rapporteur on Torutre, Manfred Novak

individuals from arbitrary and excessive use of force while in police custody as well as national legislative looking into the constitutional protection from torture and the criminalization of the same; the second aspect will introduce the mechanisms for monitoring and prevention of torture in places of deprivation of liberty (such as the Committee for Prevention of Torture (CPT), the Sub-committee for the prevention of torture on international level (SPT) or the mechanisms for internal and external control of the police, such as Sectors for internal control, NPMs etc.); the third pillar would present the role and inclusion of civil society (NGOs) in the process of torture prevention, as an objective and independent actor and a constant watch-dog of the performance of state officials. The aim would be two-fold: first, evaluating the implications of international legislation and mechanisms in torture prevention and those of the domestic ones; and second, doing comparative analysis between the set-up and performance of national torture prevention instruments and mechanisms in police custody between two countries, Macedonia and Serbia. Their historical development and geopolitical similarities have contributed for them to develop similar legal order and thereby similar torture prevention systems. The analysis in the thesis however, will make an effort to map the differences between the both, in order to determine which components might lack from one or the other but are potentially more successful in monitoring and prevention of torture in police custody. At the same time, as neighboring countries, Macedonia and Serbia influence one another in bilateral cooperation as well as through regional networks. They often share experiences and good practices for the purpose of improvement in dealing with torture in police custody.

The thesis is divided in three chapters which are followed by a conclusion. Chapter 1 examines the International standards and mechanisms for torture prevention. The purpose of this chapter is initially to introduce the scope of protection from torture that international human rights

instruments provide as well as the type and performance of international torture prevention mechanisms. Chapter 2 focuses on the legislative set-up for torture prevention and protection that exists in Macedonia, with a special emphasis on standards for police conduct. It further examines in depth, both internal and external control mechanisms of the police, their strengths and weaknesses. Chapter 3 follows the same pattern, shifting its focus on Serbia, in an effort to map their solution in dealing with torture in police custody and its prevention. Ultimately, the Conclusion will summarize the similarities and differences between the frameworks of both countries and international standards, and at the same time it will offer constructive recommendations which might contribute to the improvement and effectiveness of these systems.

Chapter 1: International and regional instruments and mechanisms for torture prevention

Over time, with a history full of oppressions and violations, people decided that there was need to establish basic principles and values of life and treatment that would protect individuals` dignity, physical and moral integrity. The united people of the world had an obligation to fulfill in three steps. "The first step would consist of describing the rights concerned, the second step of embedding these rights in legal obligations of States, and the third step of constructing an international system for ensuring the implementation of these obligations by the States."[18] In 1948 this was not very difficult to achieve, the world still stricken from the atrocities of the Holocaust, quickly and unanimously agreed on the principles for protection of human rights in the *Universal Declaration of Human Rights (UDHR)*. This was only the beginning of a series of international documents and standard settings that ensure the maximum protection of the individual from abuse of his inherent and inalienable rights.

The United Nations (UN) strongly emphasized the importance and the absolute unacceptability of any treatment, punishment or other type of behavior that would infringe the dignity, physical integrity or psychological condition of the human being. They have engaged in creating declarations and conventions which specifically address the question of torture, inhuman and degrading treatment or punishment, and depending on their character, predict obligations that participating states have to fulfill. In addition, as a supplement to legally binding conventions, multiple standards and guidelines have been introduced by the UN, which do not emanate legal

[18] Burgers, J. Hernan and Danelius, Hans- A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Martinus Nijhoff Publishers 1988, the Netherlands

but moral obligation for the States. These soft-law instruments often provide for in-depth analysis for the purpose of interpretation of legally binding documents.

The system of protection goes beyond, consisting not only of standard setting documents, but mechanisms for their implementation as well. Treaty bodies have been established by the UN, for monitoring states` conduct in implementing human rights standards. Some of these bodies derive from torture-related treaties and their performance is solely focused on torture issues. It includes prevention through monitoring, review of states` progress reports as well as individual complaints review and inquiries. Others address the prohibition of torture and ill-treatment as part of the general human rights standards implementation.

In line with a universally developed system for torture prevention, separate systems of instruments and mechanisms have been established on regional level as well. While in some regions, provisions on legal obligations for prohibition of torture have been incorporated in bills of rights (*The African Charter on Human and People`s Rights (1981)* and *the American Convention on Human Rights (1969))* others have accepted content-specific treaties (such as the *Inter-American Convention to Prevent and Punish Torture (1985).* For the main purposes of this paper, we will focus on the European system.

This chapter will analyze in depth the most important instruments and mechanisms in both, international and regional framework, which are meant for the protection of individuals from torture, cruel, inhuman or degrading treatment or punishment. Special focus will be put on torture and ill-treatment prevention in police detention. It will also refer to some national legislation and safe-guards that should be taken into consideration.

1. Torture prevention standards and instruments

The ***UDHR,*** was the first achievement that recognized human rights as universal standards. It was voted unanimously by representative of states from different cultures and traditions. In Article 5 it states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Although the UDHR (as a declaration) does not have a legally binding character, the standards it promotes have become a part of customary international law, which means that states are still obligated to act in accordance, whether they are participating countries of the UDHR or not. The prohibition of torture is one such universal standard, which extends to all situations and circumstances, applies to everyone, at any time.

The ***International Covenant on Civil and Political Rights (ICCPR)*** which was adopted in 1966 but entered into force ten years later slightly extends the protection of individuals from torture, cruel, inhuman and degrading treatment. This is a strong, legally binding document which reaffirms the universal rights contained in the UDHR, but in a more specific manner. Article 7, offering the same protection as in article 5 of the UDHR, prohibits the use of torture in any circumstances. Additionally, it extends the scope of protection by prohibiting medical or scientific experimentation without consent. Furthermore, article 10, refers to the treatment of persons deprived of their liberty who have to be "treated with humanity and with respect for the inherent dignity of the human person", which supports the prohibition of torture, cruel, inhuman and degrading treatment. More importantly, the ICCPR in article 4 strictly expresses that no derogation can be made (among others) from article 7, meaning that the prohibition of torture or cruel, inhuman, or degrading treatment or punishment is an absolute one and cannot be derogated from even in a state of emergency. In article 2 paragraph 3(a), it also declares that all states are obliged to offer an effective remedy for the violation of any right granted in the Convention,

notwithstanding that the violator has been acting in official capacity.[19] This should also be interpreted in conjunction with article 7 that persons acting in official capacity are not allowed to use measures or torture, cruel, inhuman and degrading treatment.

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[20]. In the ECHR, the prohibition of torture has been defined in article 3 in the following words:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment" What could be immediately seen from the formulation of the article is that the drafters have omitted the reference to "cruel" treatment or punishment, which differs from the UDHR and the ICCPR. However, further in the text we will address to relevant case-law on the interpretation of article 3 in practice. The ECHR does not neglect the absolute prohibition of torture and it stipulates that article 3 cannot be derogated from.

In 1987 was adopted the ***European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,*** by the Council of Europe**.** This regional treaty was built on the provisions of the ECHR and was meant to strengthen the same. The need to do so was the experience that systematic use of torture still existed, particularly in conditions of deprivation of liberty.[21] For that purpose the CPT, plays a significant role in the prevention of torture as well as in the standard-setting process on international level.

[19] CCPR General Comment No. 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading treatment or Punishment)- 44th Session of the Human Rights Committee (HRC), 10 March, 1992, paragraph 14

[20] The European Convention on Human Rights (ECHR) was opened for signature on 1st of November, 1950 and came into force in 1953. The ECHR has 16 adopted protocols

[21] European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, The text of the Convention and Explanatory Report, Council of Europe 2002 http://www.cpt.coe.int/en/documents/eng-convention.pdf

Among all international documents, ***The United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)*** is the most important one, being the first international legally-binding document specifically regarding torture. "A total of 145 State parties from all regions of the world accepted far-reaching binding legal obligations to prevent torture and ill-treatment, to bring perpetrators of torture to justice and to assist victims of torture."[22] It was not the principal aim of the convention to introduce definitions of torture and the circumstances in which torture and other cruel, inhuman or degrading treatment will be prohibited[23], since it is considered that these principles have already been established as part of international law.[24] The intention was however, to introduce a more efficient system of protection and enforcement that would strengthen the effectiveness of these principles and standards. What was also important to observe was that the UNCAT does not refer to cases in which there was ill-treatment by an individual acting in private capacity, but only when such ill-treatment is inflicted by a public official, any person acting in official capacity or with the passive assent of an official. Article 1 states:

> "…the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

[22] Nowak, Manfred and McArthur Elizabeth- The United Nations Convention Against Torture, A Commentary, Oxford University press, 2008, pg. vi

[23] This was already done so in the ***Declaration on the Protection of all Persons from being Subjected to Torture, and Other Cruel, Inhuman or Degrading treatment or Punishment (1975)***

[24] Burgers and Danelius, 1988, pg. 1

In 33 articles, the UNCAT covers substantive norms and rules of implementation. In the beginning, larger part of the provisions substantively refer only to the phenomenon of torture, while a more limited number of provisions address cruel, inhuman and degrading treatment. It addresses questions such as the obligation for non-extraditing a person if there is danger he would be tortured in the extraditing country (article 3), the procedural obligations of the state when a person is taken into custody (article 6), the education and training of officials who may be involved in the deprivation of liberty of an individual (article 10), the right to redress of a victim of torture (article 14) etc.

In conclusion, the *UN Convention Against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment,* along with the mechanisms for implementation established in its provisions, represent one of the most significant instruments on international level, which provide not only for theoretical definition and protection, but for practical implementation also.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (OPCAT)

The OPCAT is a highly significant UN instrument, since it has been established more as an individual document, rather than a supplement on the UNCAT. Its significance can be seen in the fact that it is based on the principles and norms of the UNCAT but instead of repeating them it establishes the creation of new mechanisms. These mechanisms, based on the experience of the CPT in Europe, are to provide for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. "The origins of the Optional Protocol lie in the belief that torture and ill-treatment can be prevented-or the risk of such treatment can be lessened- by visits to places of detention undertaken by external independent observers with appropriate powers of access and

recommendation."[25] The most important intention with the creation of OPCAT is that it is meant to act proactively, instead of reactively upon discovery of torture or other type of ill-treatment in places of deprivation of liberty. As it is explicitly stated in Article 1, "the objective of the Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."

The above mentioned documents are not the only, but the most significant hard-law instruments for creating an international system of standards and mechanisms for the prevention of torture and other cruel, inhuman and degrading treatment. Specific provisions of other documents incorporate the prohibition of torture and other kind of ill-treatment within its provisions, such as the *Geneva Conventions (1949), Convention on the Rights of the Child (1989), a Declaration on the Protection of All Persons from Enforced Disappearances,* etc. A wide range of soft-law instruments have also been introduced, rules and standards that would prevent the creation of circumstances and conditions in which torture would take place, such as *the Standard Minimum Rules for Treatment of Prisoners (1977).* Other, address specific professions or individuals who might be potential participants in violations which include torture, inhuman or degrading treatment. Some of the more important are: *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Code of Conduct for Law Enforcement Officials (1979).* These will not be addressed separately, but their importance is duly noted as the influence they have had on the development of international hard law instruments is of enormous significance.

[25] The Optional Protocol the UN Convention Against Torture- Murray, Steinerte, Evans and Hallo de Wolf, Oxford University Press, 2001, pg. 6

2. Torture prevention mechanisms

One of the most important features that need to be accomplished in order for international or regional treaties to be implemented is to set up efficient mechanisms in line with these documents. While most of the content-specific documents on torture have predicted the establishment of a monitoring mechanism for its implementation, general human rights treaties are addressed on regular UN sessions. For example, the UN Human Rights Committee (HRC) regularly addresses the implementation and states action in accordance with the ICCPR, among which is the prohibition of torture, through concluding observations or by examining individual complaints.[26]

The absolute prohibition of torture, inhuman or degrading treatment has been extensively and at many times confirmed by the ***European Court of Human Rights (ECHR).*** It has developed case-law which emphasizes zero tolerance of torture or any kind of ill-treatment which may cause harmful mental or physical consequences to the individual. Following the decisions of the ECtHR, we can observe several points. Namely, in order for a violation to amount to torture and satisfy the requirements in the Convention against torture "three aspects are particularly relevant: the conduct, the intention of the offender, the identity of the offender."[27] In the established practice of the ECtHR we can notice that, besides these three aspects, the Court extends the scope of article 3, and takes into consideration the whole circumstances of the use of torture, inhuman or degrading treatment and punishment. In that sense, we will examine a few judgments of the ECHR which will help us in the interpretation of what amounts to a violation of Article 3.

[26] A competence given to the HRC with the First Optional Protocol to the ICCPR, Article 1 http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx

[27] A digest of cases of the European Committee for the Prevention of torture and the United Nations Committee Against Torture, editor Ineke Boerefijn, Open Society Institute 2001, pg. 25

In the case of ***Selmouni v France***[28], the Court found a violation of article 3, where the treatment of the applicant in custody was "**inhuman and degrading**". Mr. Selmouni was held in police custody for 4 days and was questioned by the police department on several occasions during those days, in connection with drug-trafficking. During his stay in custody were made 4 medical reports, in which substantive bodily injuries were found on Mr Selmouni. He complained on police brutality during the time spent in custody and he had the medical reports to confirm his allegations. The ill-treatment by the police officers, consisted initially of degrading and insulting behavior of some of the police officers, such as dragging by the hair, forcing him down on his knees, threaten him with different objects, during which all time he was constantly hit, and eventually sexually assaulted by the group of police officers. He refused to speak, even though he was threatened of more torturing if he did not. In its reasoning, the Court established that it has taken into consideration the medical reports which clearly testify of the abuses over Mr. Selmouni, and the time frame that they appoint to was the time he spent in custody. The Court also stated that it has been obvious that besides physical injuries, Mr. Selmouni has suffered mental pain and distress. Altogether, the Court has established that the physical and mental harm done to Mr. Selmouni constituted severe pain and suffering, which amounted to violation of Article 3 of the Convention. In this case we can see that the Court while determining the violation of Article 3 takes into consideration not only the conduct of the police officers, but also the amount of suffering to the applicant as well. It has been observed that what the Court found as amounting to inhuman and degrading treatment in this case might have not been the case under the CAT, because the CAT seems to give a more limited comprehension of what amounts to torture.[29]

[28] Application No. 25803/94, judgment of July, 1999
[29] A digest of cases of the European Committee for the Prevention of torture and the United Nations Committee Against Torture, editor Ineke Boerefijn, Open Society Institute 2001

Tomasi v France*[30]*. Mr. Tomasi was held into custody for two days, after what he was charged and detained for pre-trial. He was suspected and accused for involvement in a murder, but eventually has was acquitted. Mr. Tomasi complained, among other things that he has been subjected to inhuman and degrading treatment from which he has gained injuries on his body confirmed by four medical examiners. The Government did not have an argument or explanation to prove how Mr. Tomasi got the injuries, but they had simply denied that the injuries were inflicted during his custody in the police station. The certificates of the doctors however, contained detailed information about the time of the infliction of the injuries, which was consistent with the time that the applicant had spent in police custody. Therefore, the Court concluded that there has been a violation of article 3, relying on the independence of the medical practitioners and the evidence for the intensity of the injuries.

In the case of ***Korobov v Ukraine*[31]*,*** Mr. Korobov was a national of Ukraine and was suspected of extortion of money from another person and was arrested for prosecution. On the day that he was arrested, witnesses claimed that he had opposed the arrest and the police had to use force in order to arrest him. He was then taken to a police station. When his pre-trial detention was determined, Mr. Korobov was complaining on being beaten and tortured by the police while in custody and submitted to electric shocks. The medial examination had shown severe injuries on his back, chest and hips, which he could have gotten as a result of hitting by fist or kick or by falling. Although the decisions of the domestic courts claimed that Mr. Korobov has sustained his injuries by resisting the arrest, there were many more suspicious statements which were not consistent and the medical reports were inconsistent too. Taking in consideration the severe injuries and the post-traumatic effects that Mr. Korobov has suffered, the Court found a failure of the authorities to

[30] Application No. 12850/87, judgment of August, 1992
[31] Application No. 39598/03, judgment of July 2011

apply the predicted safe-guards for persons under detention, as well as to conduct a thorough investigation afterwards, which did amounted to torture and in violation of article 3 of the ECHR. These decisions of the Court, among many others, show that the Court recognizes violation of article 3 when the conduct of police officials points towards the use of inhuman or degrading methods or treatment. In all circumstances mentioned above, the intent of the police officials for extortion of confession or other information can be recognized in the threats during the use of this kind of inhuman methods.

One of the more important elements of the UNCAT is the establishment of the ***Committee Against Torture (the CAT)***, whose organization, work and duties are in details determined from article 17 to 24 in the Convention. The importance of the CAT is that it is meant to provide for the implementation of all measures in the Convention. According to the UNCAT, the CAT is composed of ten experts in the field of human rights, which are elected by the states, but perform in their personal capacity. They should all be respectable and recognized experts.[32] The CAT submits a report once a year to the General Assembly and all State Parties on its activities. As regulated in article 19, the State Parties submit a report to the CAT on their activities taken to fulfill their responsibilities for the implementation of the UNCAT. After the initial report, the State parties submit a report every four years. The CAT on the other hand, has the discretion to submit comments on activities or measures it considers are necessary for improvement. In article 20, a specific entitlement is given to the CAT, if it has sufficient and justified reason to believe that systemic practice of torture is present on the territory of a state to demand cooperation from the state and additional information on the situation. However, Article 28 of the UNCAT allows State Parties, upon signature or ratification, to declare that they do not recognize this competence of the

[32] http://www.ohchr.org/EN/HRBodies/CAT/Pages/WorkingMethods.aspx

CAT. At the same time, in article 22 of the UNCAT, a significant capacity is given to the CAT which recognizes that individual complaints can be submitted by victims who have suffered a violation by a State party to the UNCAT. When considering the individual complaints, the CAT first examines the admissibility requirements prescribed in the CAT, and if decided that the complaint is admissible, then considered the merits of the complaint. After examining the merits, the CAT send a report to the state concerned, asking for explanation of the facts and circumstances in the case within six months. The applicant also has the right to file his observations. If the CAT finds that a State has violated a right from the UNCAT, it may give instructions to the state on specific measured that need to be taken in order to remedy the harm to the complainant. Additionally, the CAT includes these finding in the reports on specific states. This mechanism is highly significant for the complainants, since it gives them a formal role in the procedure and a decision in their interest can be used for advocacy purposes in the future. It has been the case however, that many States upon the ratification of the UNCAT, submit a reservation from recognizing the individual complaints capacity of the CAT, which makes it impossible for individuals to submit a communication against those states.

Article 2 of the OPCAT provides for the formation of the ***Subcommittee on Prevention of Torture or Other Cruel, Inhuman or Degrading treatment or Punishment*** (the SPT) of the Committee Against Torture, which represents one of the basic purposes the Protocol. In the following provisions the scope of activities that the SPT can perform is described, for example one of which is, that it can perform regular visits on the territory of state parties, in places where deprivation of liberty occurs (Article 13). Furthermore, it also refers to the obligations and duties that the states have towards the mandates of the SPT, which are obliged among other things, to provide it with unlimited access to information about the number of people who have been subjected to torture,

about the places of detention that it happened, or even to allow private interviews with individuals deprived of their liberty. The second one, out of two highly important intentions of the OPCAT, was the obligation of each State Party for the establishment of an NPM. The aim of the establishment of the NPMs is to provide an effective mechanism on domestic level for the prevention of torture or other cruel, inhuman or degrading treatment or punishment. As provided in article 20, the states are to enable the complete fulfillment of the mandates of the NPM, which would include access to all information on persons deprived from liberty, conditions of detention, as well as the liberty to freely choose the place of detention that wants to visit. Additionally, states must guarantee for the independence and impartiality of this mechanism and its personnel at the same time. A significant obligation for the NPMs is that they should, according to the Protocol, publically disseminate the findings to the public in the form of annual reports.

It is for the establishment of these two important preventive mechanisms, the SPT, and the NPMs on domestic level, that the OPCAT has been considered as a supplement on the UN Convention Against Torture.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment established the CPT**),** which was one of the biggest achievements in the European system. By signing the treaty, the state parties agree to enable the CPT to conduct visits on any place where deprivation of liberty was at place, and it will have the full cooperation by the state officials to examine the situation, or the person deprived of liberty. Further on, the appointing and selection of the members of the CPT is described, which should be respective representatives who will perform their job independently and effectively. The visits that the CPT can perform (article 7 and 8) will be announced to the Government of the relevant State, and after the notification, the CPT has the right to perform its visit at any time, without notice. It is within the obligation of the

State parties to provide for unlimited access to information and access to all places for deprivation of liberty, as well as access to information about persons deprived of their liberty. All information that the members of the Committee will obtain will be strictly confidential and not published in a public report. In article 9, there is an exception regulated of when a State can deny a visit from the CPT, which would be if there are circumstances that threaten the national security, public safety of the State, or the visit may cause a serious disorder in the place of deprivation of liberty.

Through its practice, the CPT has developed a range of standards which places of detention must fulfill in order to prevent torture or ill-treatment. When it comes to police detention, the CPT has emphasized the following: there are three initial safeguards that must not be circumvented, the first one being that each individual in police custody must have the right to notify a third party of his detention (spouse, family, council, embassy), than each detainee must have access to lawyer provided from the very beginning of the detention, and third, the detainee must be able to go through medical examination from a doctor of his own choosing, even if medical examination has been conducted by a doctor called by police authorities. The CPT sets these requirements as basics towards the prevention of ill-treatment.[33] Other rights however, also must not be neglected, starting with the fact that all detainees in police custody must most urgently be informed of all their rights. Besides these, the CPT establishes other, more of a technical standards that need to be fulfilled, such as having well-preserved, comprehensive records of all detainees, their state upon arrival etc. Additionally, the physical conditions of the police premises where detainees are held, must also stand up to CPT requirements as well as the rules and standards for questioning of individuals in police custody. At last, it is within CPT`s view that the best way to protect individuals in police custody from torture and ill-treatment, all jeopardizing circumstances must be eliminated.

[33] CPT Standards- CPT/Inf/E (2002) 1- Rev. 2013, Council of Europe

Overall, the importance of the CPT can be seen in the competence to conduct ad-hoc visits to places of deprivation of liberty. Additionally, the CPT itself has set-up standards to which places of detention should stand up to, in order to provide for a save, lawful detention, during which all human rights of the detainee would be protected and respected.

As one of the established "Special procedures" mechanisms by the United Nations, was the development of the ***Special Rapporteur*** on specific issues of interest for the protection of human rights. One of those interests where often and many violations occur, is the field of torture, and with the introducing of the SRT in 1985, an attempt to strengthening the protection of human rights by prevention was made. The mission of the SRT consists of three main assignments: one, to react upon urgent appeals in the states, where violation has already happened, or is about to happen, to conduct fact-finding missions in separate states, and to prepare and submit annual reports on the activities, the mandate and the methods of work to the Human Rights Council. As it has been established the country-visits by the SRT have to be made upon an invitation of the state and its annual reports refer to a specific theme on human rights violation.[34]

3. National standards

The primary obligation that States have on domestic level is to ensure that the implementation of the above mentioned international standards and principles has taken action. Although many of the international instruments already have the ability to perform activities on national level, it yet depends on the will and conditions of the States to work hard and implement them. Also depending

[34] http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

on the countries is the willingness for regional, bilateral and multilateral cooperation in order to improve the instruments and their effectiveness.

One of the more important steps for the prevention of torture would be the ratifying and implementation of the UNCAT and incorporating its principles and standards in national legislation. In that sense, it would be necessary to have a concrete and clear definition of what constitutes torture, cruel, inhuman and degrading treatment. Along with it, it would be inevitable to emphasize the absolute prohibition of such actions, with no space for excuse or justification. One of the more important things would be to criminalize any act of torture or ill-treatment in national criminal codes. In accordance with it, an effective investigation must be provided for whenever there is even a suspicion of ill-treatment, whether there has been a complaint or not. As most important principle on national level would be to provide for effective remedy and redress for the victims of torture, which would help even if there has been a violation of such kind.

In conclusion, states are not only encouraged to adopt the international and regional standards, but they must engage in full and complete effort for their implementation. International and regional instruments have established a substantive amount of principles and standards for the prohibition of torture. At the same time, there are a number of mechanisms which are meant to act in a preventive way, either through advisory opinions, general comments or recommendations, through regular visits to places of detention, inquiries, reports review or individual complaints. However, the effect and results of all these instruments and mechanisms in practice can only be achieved with the willingness and devotion of states themselves.

Chapter 2: Monitoring and torture prevention in police custody in Macedonia

1. National instruments and legislative

Macedonia has ratified all relevant international instruments that stipulate the absolute prohibition of torture[35] and it is its inherent obligation under international human rights law to create legal basis for the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment. However, the Constitution is the highest in legal hierarchy, "guaranteeing basic human rights and freedoms recognized in international treaties and confirmed with the Constitution."[36]

1.1 Prohibition of torture in the Constitution

With Macedonia being a civil law country, the Constitution represents a primary source of law. In Section 2, which refers to the Basic Rights and Freedoms of People and Citizens, under article 11 is guaranteed that "the physical and moral integrity of the human being are inalienable", continuing with explicitly prohibiting "any act or form of torture, inhuman or degrading treatment or punishment". From the very formulation of the article, one can see that the State recognizes the physical and moral integrity of the human being as one of the primary objects for protection[37]. It can be noted is that the Constitution-drafters have agreed on adopting the text of the ECHR, omitting the category of "cruel" treatment, rather than the

[35] The Republic of Macedonia has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms on 10/04/1997, The International Covenant on Civil and Political Rights on 18/01/1994, and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 12/12/1994

[36] The Constitution of the Republic of Macedonia, established in 1991 with its independence, available at: http://www.sec.mk/arhiva/1998_Parlamentarni/html/ustav_na_rm.htm *Устав на Република Македонија, 1991* Article 8

[37] In Section 2, regarding the Basic Rights and Freedoms of the People and Citizens, the prohibition of torture comes third in line, following the guaranteeing of the right to live as inalienable right and the prohibition of any type of discrimination.

text of the UNCAT. However, a United Nations General Assembly Resolution[38] has elaborated that "[t]orture constitutes an aggravated and deliberate form of cruel, inhuman and degrading treatment". The terms "cruel" and "inhuman" are closely related to each other to the extent that one does not exist without the other and they are not mutually exclusive. Therefore, practical implications cannot be expected.

Article 54 of the Constitution defines the limitations and restrictions on basic human rights and freedoms, which can only be made in a State of emergency.[39] Besides prohibiting limitations and restrictions on the basis of discrimination, the Constitution predicts that limitations cannot in any way refer to the prohibition of torture or inhuman and degrading treatment or punishment. This provision reflects the non-derogable nature of the prohibition of torture provisions, guaranteeing its absolute application.

1.2 Criminalization of Torture [40]

The Criminal Code of the Republic of Macedonia, in article 142 foresees criminal responsibility for "officials or those acting in official capacity, or with their acquiescence, that will use force, threat or other prohibited means or manner with the intention to extract confession or other statement from a defendant, witness, expert witness or other person, or will cause severe physical or mental suffering in order to punish a person for a criminal act that he committed or is suspected to have committed, or to intimidate or force him to forfeit

[38] United Nations General Assembly Resolution 3452, 30th Session Declaration of the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment

[39] See further: *General Comment No. 29 of the Human Rights Committee, States of Emergency (Article 4)* CCPR/C/21/Rev.1/Add.11 (2001) http://www1.umn.edu/humanrts/gencomm/hrc29.html

[40] Criminal Code of the Republic of Macedonia, enacted on November 1, 1996 *Official Gazette No. 37/1996 Кривичен законик на Република Македонија, во сила на 1, Ноември 1996 Службен Весник бр. 37/1996 English version available at:* http://legislationline.org/documents/action/popup/id/16066/preview

any of his rights, or will cause such suffering based on any type of discrimination".[41] The difficulties with this definition come from the fact that it does not provide the slightest distinction between torture and other treatment, nor between cruel, inhuman or degrading treatment. Therefore, it would be completely in the discretion of the prosecution to qualify the act or to the judge to decide on the sentence, depending on the used means and manner, the severity of the injuries or the damage caused (permanent consequences on the physical or mental health). Until 2009, the penalty predicted in the Criminal Code for the act of torture or other cruel, inhuman or degrading treatment or punishment was from one to five years imprisonment. However, in 2009 amendments to the Criminal Code were made, harshening the penalty for this act, with the minimum of three to the maximum of eight years imprisonment.[42] Amendments in the penalty were also made on the second paragraph of Article 142, which determines that "if the criminal act in paragraph 1 results with aggravated physical injury or other particularly difficult consequences for the victim", the existing penalty from one to ten years imprisonment, was changed with at least four years of prison sentence.[43]

The act of torture and inhuman or degrading treatment is incorporated in Articles 403-a of the Criminal Code, under the category of crimes against humanity with the intention of systematic destruction of the population, in line with other crimes such as rape, slavery, killing and other deliberate, inhumane activities which will cause extreme suffering. The punishment for this

[41] *Ibid,* article 142 (1)
[42] Law on amending the Criminal Code of the Republic of Macedonia, Official Gazette No. 114/09, 14.09.2009, Article 21
Закон за изменување и дополнување на Кривичниот Законик на Република Македонија, Службен Весник бр. 114/09, донесен на 14.09.2009, Член 21
[43] Besides introducing harsher punishment for the criminal act of torture, later in the text will be pointed out that the real problem is impunity, which comes either from different qualification of the criminal act or the very low rate of reporting such acts.

kind of criminal act will be at minimum 10 years to life imprisonment. The same punishment is predicted for the acts of torture, inhuman or degrading treatment against the civil population during war times. In practice however, this article has never been applied.[44]

1.3. Additional legal safeguards

Since it has been established so far that the risk of torture or other cruel, inhuman or degrading treatment is the highest when police officials are in a position to exercise their authorities over individuals deprived of their liberty without judicial control, it is of high importance to have standards and principles that would protect individuals from such action in every segment of their encounter with police authorities, or would in other way provide for the deterrence of perpetrators to commit such act. In that sense for example, the Criminal Procedure Code[45] in article 12 regulates the legality of evidence in a criminal procedure, prohibiting the extraction of confession or any other statement from the defendant or other person involved in the criminal proceedings. Furthermore, paragraph 2 of Article 12 States:

> "Evidence obtained in an illegal manner or by violating the rights and freedoms of the people established in the Constitution, laws or international instruments, as well as evidence which derive from such evidence, will not be admitted in court and will not be the basis of a judgment."

It is evident from this article that the law-drafters have successfully incorporated international principles of exclusion of evidence obtained through torture[46]. However, the sole existence of

[44] Following the crimes committed in the armed conflict of 2001 in Macedonia, in 2011 there were 4 cases of individuals which were supposed to be tried under article 403-a. However, instead of prosecution they were amnestied by the Government of Macedonia, so the prosecutions were never proceeded.

[45] Criminal Procedure Code of the Republic Of Macedonia, *Official Gazette No. 150/2010,* entry into force in December, 2013
Закон за Кривична Постапка на РМ, Службен Весник бр. 150/2010, стапува на сила во Декември, 2013

[46] The Exclusionary rule in article 15 of the Convention against torture; On the admissibility of evidence obtained through torture, see also: *The Admissibility of Evidence Obtained by Torture under International Law- Tobias Thienel, The European Journal of International Law, Vol. 17, no. 2, 2006* available at: http://www.ejil.org/pdfs/17/2/78.pdf

this article has proven to be insufficient to prevent the long lasting practice of police officers from using different means of ill-treatment, whether it is for the sake of extracting confession or information, or other reasons. With the former Criminal Procedure Code[47], an investigative judge was in charge of the investigation in criminal matters by the police which gives the police more discretion and less control. With the new Criminal Procedure of 2011, it is the public prosecution which guides the investigation of a "judicial police", specifically determined for the purpose of the investigation. In this way, the police cannot take any action without the authorization of the public prosecution, which is considered that might deter police officers from using torture and ill-treatment as an investigative tool.

The Law on Police[48] closely regulates each segment of the police work, the structure and organization of the police, as well as the authorities that police officials can exercise. Among these, as protector of the law and responsible for the prevention and suppression of crime, article 32 (1) states that the police is authorized to "limit the basic human rights and freedoms, under circumstances and in a manner that are specified in the Constitution of the Republic of Macedonia and the law".[49] The deprivation of liberty is a limitation of such kind that police officers must be especially cautious, not to exceed their authorities and at the same time respect other rights of the person being deprived of its liberty. Therefore, article 32 (2) explicitly states that "while exercising its authorities the police officer has the duty to respect the dignity, integrity and honor of the person, as well as his basic rights and freedoms". One of the common justifications behind acts of abuse in the hands of the police is the liberty that the law gives to police officers for a discretionary judgment of what represents a "reasonable"

[47] Criminal Procedure Code, *Official Gazette no. 15/97 from 03.04.1997*
[48] Law on Police of the Republic of Macedonia, *Official Gazette No. 114/06 from 03.11.2006*
Закон за Полиција на РМ, Службен Весник бр. 114/06 донесен на 03.11.2006
[49] Ibid, Section 4- Police authorities, article 32 (1).

force[50]. Even though the law does foresee concrete circumstances when physical force should be used[51] it is within the individual police officer to determine what kind of physical force and to what amount he/she will use, depending on the circumstances. If allegations of torture arise, then an assessment of the legality, justifiability and appropriate use of force will follow.

When a person is held in police custody, according to article 25 of the Statute for the Exercise of Police Authorities, from the point of his arrival in the police station, a "police officer for admission"[52] has the responsibility to assure for the respect of all rights that belong to the person according to the Constitution, the law and other legal instruments. Moreover, he is responsible to authorize and register every contact with other police officers and investigators and only for the purpose of conduct of police work and most importantly, he is responsible to guarantee for the safety and security of the person in custody. Considering this point of the provision, it should be expected that if acts of torture or any other kind of ill-treatment occur, or allegations of such actions are made, the "police officer for admission" should be aware of their occurrence, or at least be a starting point of an effective investigation.

2. Sector for Internal Control and Professional Standards

Within the Ministry of Interior, as a mechanism for internal control and oversight of the police work, the Sector for Internal Control and professional standards (SICPS) is set up, whose mandate and authorities are regulated in the Law on Internal Affairs.[53] As prescribed by the Law, the SICPS

[50] Statute for the Exercise of Police Authorities, *Official Gazette No. 149/07, enacted on 10.12.2007*
Правилник за начинот на вршење на полициските работи, Службен Весник бр. 149/07, донесен на 10.12.2007
[51] Ibid, Article 83, physical force should be used as defense from an attack, prevent an escape, or overcome resisting an arrest.
[52] Originally in Macedonian: "полициски службеник за прифат- сменоводител"- police officer on duty, police officer for admission, shift officer.
[53] Law on Internal Affairs of the Republic of Macedonia, Official Gazette No. 42/2014, 03.03.2014, article 58
Закон за внатрешни работи на РМ, Сл. Весник на РМ бр. 42/2014, 03.03.2014, член 58

is "a separate organizational unit of the Ministry of Interior which undertakes procedures to determine the lawfulness of the acts of representatives of the Ministry" (paragraph 1 of article 58). Additionally, the Law stipulates that "whenever a citizen considers that his basic rights and freedoms have been limited or violated by a representative of the Ministry of Interior, he is able to submit a complaint to the Ministry". From there on, it is the SICPS that will take action and investigate the allegations in the complaint. According to the Statute for conduct of activities by the SICPS[54], beside individual complaints, the SICPS receives complaints from the Ombudsman, as well as non-governmental organizations. In regard of the activities of the SICPS, after conducting an investigation it will decide upon the findings whether the complaint is valid, not valid or it is unable to confirm the facts of the case. If the findings show that the allegations for unlawful conduct by police officials are true and can be confirmed, it can initiate the undertaking of disciplinary, civil or criminal procedure against them. In order to do this, the SICPS is provided with unlimited access to all documentation and registry of the police.

The members of the SICPS are both appointed by the Minister of Interior and responsible to report before him/her as well. Currently holding the position of Assisting Minister for Internal Control and Professional Standards, is a woman, who has been appointed to the position since 2008 (for 6 years), after a relatively short career of eight years in the police.[55] The most disputable issue often raised here is the independence and objectivity of the SICPS, given the fact that in charge of all activities is an Assisting Minister which by definition is a political function. In no law or statute, there is a prescribed mandate for the Assisting Minister for Internal Control and Professional

[54] Statute for the conduct of activities by the Sector for Internal Control and Professional Standards with the Ministry of Interior, enacted by the Minister of Interior in May 2007

[55] Mrs. Aneta Stancevska, Assistant Minister of the Sector for Internal Control and Professional Standards, appointed since 2008, allegedly a member of the ruling party or closely related to high-ranking members of the ruling part, has often been a target of public criticism by the media about her independence and expertise. http://mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=130

Standards, and change in structure and shifting positions is one of the key elements to provide for objectivity and independence.

Article 3 of the Statute for conduct of activities of the SICPS, stipulates that "the SICPS does not give any information to the public regarding its activities, unless ordered differently by the Minister of Interior". In order to provide for transparency of its work, the SICPS publishes yearly report, as well as programs of planned activities for the upcoming year. However, even though the reports should be publically available i.e. published on the official website of the Ministry of Interior, not all of them are.[56] There is a gap in the reporting years between 2009 and 2012.[57]

In the existing reports, one can find statistical data of the number of complaints submitted to the SICPS. The total number of complaints varies: in 2011 there were 1250 complaints submitted to the SICPS, while in 2012 this number has significantly increased to 1644. Out of the total number of complaints in 2012 (1644), 73 of them referred to complaints of "excessive use of force by police officers"[58]. After conducting investigation the SICPS has found that 46 of them were ungrounded, in 23 cases there were no sufficient evidence and the facts of the cases could not be determined, and only in 4 cases (5.4%) has been determined for criminal or disciplinary procedures to be initiated. In 2013, there has been a slight decrease to 1584 complaints. There has also been a slight decrease in the number of complaints submitted for excessive use of force by police officials, which from 73 came down to 57. The SICPS had found that in 33 of the cases there were no grounds to proceed, in 23 of the cases there was no sufficient evidence and it was impossible to

[56] The reports for 2010 and 2011 are not available on the website. An effort was made to contact the Ministry of Interior- Sector for Internal control, and ask for the reports for the purpose of statistical analysis, both via e-mail and official request for information of public character. However, until present day no response was received.
[57] This has made the statistical analysis difficult.
[58] Annual Report for the work of the Sector for Internal Control and Professional Standards, No. 13-111/1, 15.01.2013, Skopje, page 5

determine whether there has been unlawful behavior. What is striking is that in only one case throughout the whole year that the SICPS had established that there are enough grounds to initiate criminal procedure and hold the police officer accountable for the act. It is highly symptomatic to see that in most cases of the complaints submitted to the SICPS, it does not found enough grounds or evidence to prosecute police officials for excessive use of force that amounts to torture, inhuman or degrading treatment. Furthermore, in those cases that are investigated, it happens very rarely that the SICPS actually finds solid evidence, to the extent that in only 1 to maximum 4 cases a year have police officials been criminally prosecuted for these acts.

3. Parliamentary external control

According to the Law on Internal Affairs, article 59 stipulates the types of external control preformed on the work of the police.[59] More precisely, the Law on Internal Affairs designates the Parliament and the Ombudsman (the Public Defender) to conduct effective oversight on the work of police officials and thereby protect the dignity and human rights of all citizens. The parliamentary oversight of police work is foreseen to be performed by a Parliamentary Commission for Defense and Security (PCDS).[60] Once a year, units of the Ministry of Interior are obligated to deliver a report to the PCDS.[61] After examining the activities consisted in the report, the Commission reports back to the Parliament about the work of the Ministry of Interior. This process however, is highly confidential and given the fact that classified information are concerned, the findings and conclusions in these reports must correspond with the same level of classification. On other note, as part of its commitments, the Commission is also responsible for

[59] Law on Internal Affairs, Article 59
[60] The Parliamentary Commission for Defense and Security exist under this title since 2002 with slightly different and broaden areas of activity than the previous, Parliamentary Commission for Internal Affairs and Defense (1998-2002)
[61] Law on Internal Affairs, article 63

control and oversight of laws and legal amendments that are proposed or enacted, and concern the field of police work or other security services.

There are several difficulties that arise regarding the effectiveness of the monitoring and oversight that the PCDS is conducting over the work of the police: first, under the excuse that classified information are concerned in the work of the Ministry of Interior, the level of transparency of the PCDS is hardly present. Dealing with classified information is not a justification for the Commission not to inform the public of its work or findings. In other words, it is hard to say that the monitoring is conducted effectively, since there are no visible outcomes. Second and far more important, is the fact that this is a highly political body, whose members are Members of the Parliament (MPs) i.e. political figures. The PCDS consists of a president and his deputy, and 12 members and their deputies, all representatives of political parties in the Parliament. This being so, the members are not elected and appointed by their professional experience or knowledge, which seriously undermines the expertise of the Commission and their ability to perform oversight. Furthermore, for the past several years, president of the Commission has been elected a member of the ruling party, as well as the majority of members.[62] In conclusion, the fact that this monitoring mechanism is highly dependent on the political situation in the country, and the lack of transparency of its work, makes its monitoring abilities rather limited and its capacities disputable.[63] This is supported by the fact that the PCDS has never in its existence taken any specific actions on torture or ill-treatment by the police.

[62] After series of incidents in the Parliament and turbulent political scene in the country, the opposition party has left their seats in the Parliament for almost 2 years now. Following these events, the PCDS consists of majority of MPs from the ruling party and small number of MPs from other parties (4 out of 12). This situation additionally jeopardizes the independence of the parliamentary committees.

[63] Parliamentary oversight on the Government in the Republic of Macedonia- Foundation Open Society Macedonia, Skopje, November, 2012, page 46-56
Парламентарна контрола над Владата на Република Македонија- Фондација Отворено општество-Македонија, Скопје, ноември, 2012, стр. 46-56

4. The Ombudsman (National Preventive Mechanism (NPM))

According to the Law on Internal Affairs, the Ombudsman is another established institution that may provide for external control and monitoring over the work of the police.[64] A significant step forward in the prevention of torture was the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment on February 13th 2009, which as described in Chapter 1 stipulates the designation of a National Preventive Mechanism. The implementation of the Optional Protocol would presuppose the establishment of an independent and unbiased institution which will have the mandate to freely conduct visits to any place where deprivation of liberty has taken place, to detect acts of torture or any type of cruel, inhuman or degrading treatment, as well as to give recommendations to relevant institutions which are responsible for the treatment of persons deprived of their liberty and to monitor the legislative processes and take part in drafting relevant laws.[65] One of the more important mandates of the NPM is the capacity to talk directly to individuals who have been deprived of liberty, without the presence of official authorities (Article 20 (d)). Furthermore, the capacity to communicate with the SPT must be respected and all information kept with complete confidentiality in order to protect the personality and privacy of persons (Article 20 (f)).

After signing the OPCAT in 2006, there have been a number of debates, consultations and experts meetings on the issue of the establishment of an NPM in Macedonia. It was then decided that it would be most convenient to designate the Ombudsman with these mandates in the beginning and

[64] Law on Internal Affairs, article 64
[65] Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on the 18th December, 2002 by the General Assembly of the UN, resolution A/RES/57/199, Article 19

work on the necessary requirements for an independent National Preventive Mechanism later on.[66] This was confirmed with the ratification of the OPCAT in 2008.The National Preventive Mechanism eventually became operational on the 1st of April, 2011, with three human rights experts in the capacity of prevention of torture or other cruel, inhuman or degrading treatment or punishment advisors.[67] As predicted by law and international standards, the NPM is working in close cooperation and support of the SPT and stands by the principles of transparency, but at the same time, confidentiality of its work.

As a monitoring and prevention mechanism, the NPM has succeeded to influence changes in some parts (for example, a wing of Idrizovo Prison was closed due to an intervention by the NPM for below-standards condition), but there are significant downsides to its work. Initially, it is consisted of only three human rights experts, who perform all operations. Later on, in 2013, one even left his position and the NPM now consists of only two people. Namely, there are 11 penitentiary institutions on the territory of the Republic of Macedonia, 2 correctional institutions and 38 police stations. According to the OPCAT principles, the NPM is responsible for monitoring the conditions and performance of all these institutions. Its capacity however questions the effectiveness of its work in the first place. Regardless of their expertise or hard work, it is hardly likely that a team of two (three) people can successfully monitor the situation to such level that it will provide for the prevention of torture, inhuman or degrading treatment.[68] Furthermore, an effective NPM is one with multidisciplinary approach and experts from different professional

[66] Annual Report of the Ombudsman- National Preventive Mechanism of the Republic of Macedonia, 2011 available in Macedonian, Albanian and English at: http://www.ombudsman.mk/ombudsman/upload/NPM-dokumenti/2012/Godisen%20izvestaj-NPM-so%20korica.pdf
[67] Annual Report of the Ombudsman- National Preventive Mechanism of the Republic of Macedonia, 2011, page 9
[68] 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)- December, 2012

expertise from outside[69]. This however was hardly the case in the Macedonian NPM in the beginning. All members of the NPM are experienced lawyers, but no diversity of professions can be seen within its staff. Efforts have been made to overcome this problem in 2012, when a Memorandum for cooperation with the Association of psychiatrists of the Republic of Macedonia was signed and the intention was, that psychiatrists would take part in visits in places of detention, would provide their expert opinion on individual cases and report when necessary. In 2013, this type of collaboration was arranged with 7 other experts associations (the Association of psychiatrists of the Republic of Macedonia, the Association of Social workers of the city of Skopje, the Chamber of psychologists, Union of Defectologists, Forensics association with the Institute of forensics, the Association of criminology and criminal law as well as the Macedonian Young Lawyers Association)[70].

A significant and inevitable part of the work of the NPM is the cooperation with civil society and inclusion of the same in monitoring places of detention. It is recommended by experts that the inclusion of civil society (non-governmental organizations) will enable to create a more effective model of an NPM[71]. Such intentions were presented in the preparatory meetings for the establishment of the Macedonian NPM and non-governmental organizations took part in the initial meetings. However, no such cooperation existed until 2013 even though there were no legal obstacles for the same. When the Memorandum of cooperation was signed with the 7 experts associations, the NPM achieved the multidisciplinary approach its work, but the question remains, can this be considered as sufficient involvement of civil society in monitoring places of detention?

[69] Guide: Establishment and designation of National Preventive Mechanisms- Association for the prevention of torture, 2006, pg. 50- *5.1 Expertise*

[70] Annual Report of the Ombudsman- National Preventive Mechanism 2013, page 11- *Multidisciplinary approach in preventive visits of the NPM and cooperation with civil society,* available in Macedonian, Albanian and English at: http://ombudsman.mk/upload/NPM-dokumenti/2014/NPM%20Godisen%20izvestaj-2013.pdf

[71] Ibid, page 8-9, *2.2 Transparency and Inclusiveness*

The expertise of these associations can be mostly used to individually help/assess the condition of the detainees, rather than monitor the work of the police and contribute to torture prevention. Furthermore, when visiting police stations, it often happens that the team of the NPM does not even encounter with a person held in police custody, therefore the use of a psychiatrist for example, would be limited.

Although the NPM functions as a separate organizational unit of the Ombudsman`s office, according to the law, it does not have a separate budget. Instead, it provides its resources from the general budget of the Ombudsman. Until 2013, not even a separate amount of yearly resources were allocated from the budget of the Ombudsman. This raises two problems: it brings into question the operational independence of the NPM and jeopardizes its effective functioning. According to SPT`s "Guidelines on National Preventive Mechanisms"[72] these are some of the basic requirements for the establishment of the NPM. The "operational independence"[73] is threatened because it depends directly on the independence of the Ombudsman itself.[74] Therefrom, if the authority, impartiality and objectivity of the Ombudsman is brought into question, then the NPM`s independence will also be questionable. On another note, functioning as a separate organizational unit, without its own budget can cause difficulties in the effective functioning of the NPM. "In line with the Paris Principles, financial autonomy is a fundamental requirement; without it, a national preventive mechanism would not be able to exercise its operational autonomy, nor its independence in decision-making…"[75]

[72] *Guidelines on national preventive mechanisms* – Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading treatment or Punishment, 9 December, 2010
[73] Ibid, page 3, *Basic Principles*
[74] Since the Ombudsman is funded by the Government, it has often been the case that its independence is being criticized by other civil society organizations.
[75] Guide: Establishment and designation of National Preventive Mechanisms- Association for the prevention of torture, 2006, pg. 46, *4.6 Financial Independence*

4.1 Reports Review

The NPM is obliged to submit annual reports[76], which include all findings of the visits to places of deprivation of liberty that it has conducted, as well as information on the methodology they used. These reports are publically available. However, the NPM also produces separate reports ("Special Reports") for each place of detention they visit, which are confidential and specifically addressed in two directions: first, to the directorate body of that institution where below-standard conditions have been established, with recommendations which might help to improve the conditions, and second, to the hierarchically subordinate institution (the ministry) from which they can demand the fulfillment of certain material conditions, changes in the allocation of budgets or legal amendments in order to improve the conditions.[77]

From the reports, one can find a variety of conditions and circumstances that the NPM has established in its visits. In 3 years, the NPM has conducted more than 30 unannounced visits to police stations of general jurisdiction. Some of them, due to a project conducted by the Ministry of Interior and supported by the European Commission, are renovated and the conditions are slightly better and in line with international standards. Others however, are not only below the standards but they put the detainees in a state of risk, violating their integrity and physical health. Furthermore, many of the circumstances that were encountered can be considered as enabling torture or mistreatment, without leaving any traces. In that sense, the larger number of police stations, have their detention rooms allocated in the basement, or in one case, two floors below the

[76]Since the NPM became operationally functional in 2011, so far it has submitted three Annual Reports for 2011, 2012 and 2013 (in three languages, Macedonian, Albanian and English) available at: http://www.ombudsman.mk/ombudsman/MK/nacionalen_preventiven_mehanizam/izveshtai/godishni_izveshtai.aspx

[77] Annual Report 2011- Ombudsman National Preventive Mechanism of the Republic of Macedonia, May 2012, Skopje, pg. 15

ground.[78] There are no alarm systems, therefore the detainees are in no position to contact officers in case they are in need of something. Video surveillance does not function in most of the police stations, which makes it much more difficult to establish the occurrence of any events inside the detention rooms. The NPM has established that very few police stations have special interrogation rooms, but instead, they move arrested or detained persons from one room to another, where they inform them of their rights in one, and then take them for interrogation to another.[79] The NPM finds this unnecessary and forbidden, especially since one visit in 2011, where in an office used for informing detainees of their rights, a cable and a stick were detected and considered as object which might be abused by police officers during interrogation. Although most of the times they are informed of their right to an attorney, detainees held in police stations very rarely use this right. When it comes to the right to medical assistance, the NPM in all three reports informs of the irregular practice of police officers to call for a doctor, as well as the practice of registering injuries of the detainees as they are brought in the police station. This is considered as unacceptable, since it is difficult for control or monitoring mechanisms to establish whether injuries occurred before detainees were arrested or while they were in the police station. Such inconsistencies often cause the NPM to doubt that unlawful physical force has been inflicted upon the detainees.[80]

In an effort to get a clearer picture of the difficulties that individuals face in contact with the police, we will look into the statistical data of complaints submitted to the Ombudsman on this issue, since the Ombudsman himself represents a type of control over the Police work. The statistical information offered in the Ombudsman`s reports, give a detailed overview of the types of police

[78] Annual Report 2011- Ombudsman National Preventive Mechanism of the Republic of Macedonia, May 2012, Skopje, page 17
Annual Report 2012 of the NPM, May 2013, page 17
Annual Report 2013 of the NPM, May 2014, page 18
[79] Annual report of 2011, page 21
[80] Annual report of 2011, page 25-26

conduct and the number of complaints submitted. Throughout the years, there have been complaints on issues such as: detention over the lawful time limit of 24h, excessive use of force and abuse of power, refraining from taking actions to protect the life and property of the people, unlawful deprivation of liberty, unnecessary prolongation of police procedures etc. Although there is a slight incline in the full number of complaints received by the Ombudsman throughout the years, there is also a slight decline in the complaints on police issues, from 2010 (238) to 2011 (179), as well as in 2012 (220), to 2013 (177). The point of our interest, the excessive use of force and abuse of power, almost every year comes as second in place for most complaints.[81]

5. Civil society as external control

There is an eminent necessity for the civil society sector, either through non-governmental organizations (NGOs) or other independent, expert bodies to take part in monitoring places where deprivation of liberty has taken place. This derives from several important reasons, "the most important one being their independence from the authorities".[82] On the one hand, with NGOs being a constant watchdog of the performance of state institutions, it is highly likely that effective and independent mechanisms for monitoring can emerge exactly from the lines of civil society. On the other, independent but professional monitoring mechanisms can be setup by experts in the field of police work, criminal law or criminology, who are not employed by the ministry of internal affairs. One such example is the Police Ombudsman for Northern Ireland[83], which conducts independent

[81] Annual reports of the Ombudsman of the Republic of Macedonia, available in Macedonian, English and Albanian, for 2010, 13.3% of 238 complaints refer to excessive use of force and abuse by police, page 34, available at: http://ombudsman.mk/upload/documents/Izvestaj%202010-Ang.pdf, ,
for 2011, available at: http://www.ombudsman.mk/upload/documents/2012/Izvestaj%202011-ANG.pdf page 41, for 2012, available at: http://www.ombudsman.mk/upload/documents/2013/GI-2012-Eng.pdf page 45-46 , for 2013, available at: http://ombudsman.mk/upload/Godisni%20izvestai/GI-2013-Ang.pdf page 54-55.
[82] Monitoring places of detention: A practical guide for NGOs- written by Annette Corbaz, consultant to the Association for Prevention of Torture (APT), published by APT and OSCE Office for Democratic Institutions and Human Rights (ODIHR), Geneva, December 2002, page 1
[83] http://www.policeombudsman.org/

and impartial investigations on complaints about the lawful and proper conduct of the police in Northern Ireland. Between the staff of the Police Ombudsman, one can find a diversity of professions, from (former) police officers and investigators, to lawyers. What is most significant is that the Police Ombudsman enjoys full independence, both from the government or the police.

In Macedonia, there have been numerous public debates and prepositions that an independent monitoring mechanism should be created. This was especially attractive after a young innocent boy was brutally murdered by a representative of Special Police Force unit in 2011.[84] After a highly controversial criminal procedure under the eyes and pressure of the public, the murderer was convicted to a prison sentence of 14 years. However, other uniformed and civilian police officials who were present at the crime scene were not even indicted under the excuse that they were not involved in the case. Other controversies, such as the Ministry of Interior`s officials trying to cover up the murder, were also raised in the public. This case, and a long lasting practice of impunity of police officers who neglect their duties and violate human dignity, was the cause for massive public protests under the slogan "Stop police brutality" which called out for accountability, effective investigation and punishment of everyone involved in the crime. This was not the first case in which the effective investigation on allegations of torture was challenged. In the case of *Jasar v. The Former Yugoslav Republic of Macedonia*[85] the ECtHR found a violation of article 3, since the authorities did not undertake any steps to investigate into the allegations of ill-treatment in police custody by the applicant, although there was a reasonable suspicion that such conduct took place. The same conclusion was established in the case of *Dzeladinov and other v. The Former Yugoslav*

[84] Martin Neshkovski, a 22 year old boy was beaten to death by a police official of the special unit "Tigers", on the celebrating night of the ruling party after winning the elections that same day (5th June, 2011). Initially, the Ministry of Interior and the media both ignored the event, after which massive protests took place, mostly of young people, demanding that justice was served and the murderer would be held accountable. The case is now before the ECHR. http://www.euinside.eu/en/news/a-mysterious-death-of-a-youngster-unleashed-protests-in-skopje

[85] Application No. 69908/01, judgment of 15 February, 2007

Republic of Macedonia[86]. Even though the applicants` lawyer brought to the attention of the public prosecutor that acts of ill-treatment had taken place in police custody, no investigative measures were initiated from his side to either confirm or contradict the allegations. Therefore, the applicants were prevented from taking a subsidiary complaint and the Court found this to be in violation of the procedural obligations that the state bears under article 3.

Due to these types of failures of the authorities, debates over the effectiveness of the existing oversight mechanisms often spiked in the public. The idea for creating an independent monitoring mechanism as a potential solution has never developed any further than a draft-law.[87] The need however for such institution remains.

[86] Application No. 13252/02, judgment of 10 July, 2008

[87] Parliamentary oversight on the Government in the Republic of Macedonia- Foundation Open Society Macedonia, Skopje, November, 2012, page 57
Парламентарна контрола над Владата на Република Македонија- Фондација Отворено општество-Македонија, Скопје, ноември, 2012, стр. 57

Chapter 3: Monitoring and prevention mechanisms in Serbia- torture in police custody

1. National legislation

1.1. Constitutional framework

Same as many of the former Yugoslav states, after Yugoslavia dissolved, Serbia inherited the ratification of UNCAT. Therefore, the non-derogable prohibition of torture, inhuman or degrading treatment has been incorporated in both its constitutions (since 1990 and since 2006), with slight difference in wording. The Constitution from 1990[88], in article 26 "guarantees the human integrity and dignity in a criminal or any other procedure, in case of deprivation or limitation of liberty of the person, as well as while serving a sentence" and then continues further in stating that "no one shall be submitted to torture, degrading punishment or treatment." The Constitution from 2006[89] however, immediately after the article guaranteeing the right to life, refers to the inviolability of the physical and moral integrity of every human being. Article 25 says:

> "The physical and moral integrity is inviolable.
>
> No one shall be submitted to torture, inhuman or degrading treatment or punishment, nor subjected to medical or scientific research without free consent."

Although the former uses a more precise wording, pointing in the first sentence to "a criminal or any other procedure", the articles in both constitutions stipulate a strong stance when it comes to the prohibition of torture.

[88] The Constitution of the Federative Republic of Serbia from 1990, http://mojustav.rs/wp-content/uploads/2013/04/Ustav-iz-1990.pdf
[89] The Constitution of the Republic of Serbia since 2006 http://www.parlament.gov.rs/upload/documents/Ustav_Srbije_pdf.pdf

1.2 Criminalization of torture

Acts of torture under international law were already forbidden when the UNCAT was introduced. The intention and purpose of UNCAT though was to strengthen and impose the obligation on states to criminalize the act of torture on national level, as it would be the most effective way to prevent torture and avoid impunity.[90] In this regard, Serbia has adopted a rather interesting solution in its Criminal Code. In the group of "criminal acts against human rights and liberties", article 137 criminalizes "ill-treatment and torture" in the following manner:

1) He who shall abuse another or treat him in a manner offensive to human dignity, will be punished by prison up to one year.
2) He who inflicts extreme pain or suffering on another, by using threat, force or other illegal manner with the purpose to obtain confession, statement or other information, or to intimidate or illegally punish, or to do this from any other motivation based on any type of discrimination, will be punished by prison from 6 moths to 5 years
3) If the act from paragraph 1 or 2 of this article is committed by an official while preforming his duties, he/she will be punished for the act in paragraph 1 by prison from 3 moths to 3 years, and for the act in paragraph 2 by prison from 1 to 8 years.

What is extremely significant about the formulation of this article is that, unlike the definition of torture in UNCAT, it provides for punishment for private persons as well. Both paragraph 1 and 2 of the article protect the human dignity, physical and moral integrity, from severe injuries and suffering inflicted by a private person. Paragraph 3 however, represents the aggravated circumstances in which the person who inflicts those injuries acts in official capacity. Although not using the exact same wording of the UNCAT, this formulation does corresponds with its requirements, in fact, it goes beyond

[90] Criminalization of torture: state obligations under the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment- Nigel Rodley and Matt Pollard, European Human Rights Law Review, 2006

its scope, holding responsible individuals acting in private capacity for acts of torture or ill-treatment.

1.3 Additional safeguards

The implementation of international laws and principles in national legislation presupposes the incorporation of those principles in every segment. For that matter, the prohibition of torture and ill-treatment should not only be criminalized, but other laws should provide for creating the circumstances where such acts would be avoided or thoroughly investigated. For this purpose, the Law on Police[91] in Serbia for example, regulating the obligations of the Ministry of Interior to enable the work of the police, specifically requires that the Ministry is responsible to "provide conditions for the prevention of torture, inhuman or degrading treatment and control the treatment of persons deprived of their liberty".[92]

Additionally, one of the generally established principles in the work of the police is the "unbiased, non-discriminatory and humane treatment, respect for human rights and possibility of medical assistance".[93] In other words, article 35 in paragraph 2, clearly points out that police officials must act humanely and must respect the dignity and integrity of every person, especially emphasizing the protection of the rights which are jeopardized or the rights of other people. It is interesting to note that the Law on Police does not regulate police powers and authorities in depth during detention or police custody, but it simply offers "additional guarantees during detention" in article 54. These additional guarantees refer to the respect of the basic rights of detainees, such as the right to remain silent, the right to be informed, in mother tongue or language that the detainee

[91] Law on Police, Official Gazette of the Republic of Serbia, No. 101/2005, 63/2009
Zakon o policiji, Sluzbeni glasnik RS, br. 101/2008, 63/2009
[92] Ibid, article 7, paragraph 14
[93] Ibid, Article 35

understands, of the reasons for the detention or any charges brought against him, as well as on the right to have an attorney or have family member informed of his/hers detention.

Out of extreme importance is the Criminal Procedure Code[94], which closely regulates many of the authorities of the police in the (pre)investigative procedure. In the very beginning, article 9 of the Criminal Procedure Code titled "Prohibition of torture, inhuman treatment and extortion" clearly states that "any form of torture, inhuman or degrading treatment, force, threat, coercion, fraud, medical procedures and other means that will affect the free will or extort confession or any other statement from the defendant or other persons in the procedure, are prohibited and punishable." This provision is highly important as it represents an additional protection from torture and ill-treatment.

The exclusionary rule of evidence, is concerned in two articles in the Criminal Procedure Code. Article 16 regulates the review of evidence and fact establishment and it explicitly states that "court decisions cannot be based on evidence obtained contrary to the norms of the Constitution, national or international laws and principles". Similarly, article 84 of the same law, refers exactly to those types of evidence which are concerned in article 16 and declares them as "unlawful evidence" which cannot in any case be used in court procedure. Although not formulated explicitly that evidence obtained through torture or ill-treatment will not be used in court, these two articles seem to satisfy the requirement of the Convention against torture, and are sufficient to discourage the use of torture with the purpose to obtain evidence.

[94] Criminal Procedure Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014
Zakonik o krivicnom postupku, Sluzbeni glasnik RS, br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014

The Ministry of Interior in 2013 issued a handbook for police officers i.e. Instructions for Handling of Persons in Police Custody and Detainees[95]. This document, in line with the Law on Police and the Criminal Procedure Code, closely defines the manner of police conduct in all police procedures, the duties of police officers as well as the rights of the detainees. It clearly stipulates that during police custody or detention, the person must be provided with the exercise of all his basic rights and freedoms, established with the Constitution and international human rights law. At the same time, police officers must in the most professional manner enable the persons in police custody to submit a complaint if their rights are violated. The instructions also focus on the transportation of persons deprived of liberty from the point of arrest to the police station[96], which is extremely important since this is a critical period for the safety of detainees, as discussed before. In conclusion, the provisions of this handbook regulating the conduct of police officers in every segment and at every point when deprivation of liberty has taken place, highly contribute to the protection of detainees in police custody from torture, inhuman or degrading treatment and for the prevention thereof. However, issues have been raised by some of the monitoring mechanisms with separate provisions of this handbook (which will be pointed put in the text further).

2. Internal Affairs Sector (IAS)

As many changes in the socio-political situation had taken place in the Republic of Serbia, the last few years have been a period of reforms in every segment of the state, both in legislative and institutional sense. Especially when it comes to the police, a number of reforms have been introduced in order to transform the police into a modern, democratized service of the citizens,

[95] Instructions on handling of persons in police custody and detainees- issued by the Ministry of Interior, 10.12.2012, Belgrade

[96] Ibid, page 9, Manner of using the police power of transporting

instead of a tool of the political power.[97] Those reforms presupposed structural reorganization and a change in the way the police was perceived by the people. In light of these reforms, one of the key elements was the setup of a monitoring mechanism, which will conduct control over the work of the police. One such entity was the Inspector General`s Service (IGS) of the Department of Public Safety, which was founded in 2001, but started functioning in 2003. It was later transformed in the Internal Affairs Sector (IAS)[98].

According to the Law on Police from 2005[99] the IAS is an independent organizational unit of the Ministry of Interior, which oversees the legality of the police work with a specific focus on the use of their authorities while performing their duty and the respect of human rights and freedoms while doing it. It is responsible to investigate the allegations in every complaint it receives containing allegations of unlawful conduct of the police or behavior that violates any international human rights agreement, the rights and freedoms guaranteed in the Constitution, as well as other national laws. For this purpose, all police officials are required to provide their full cooperation and assistance to the officials- authorized members of the IAS, in a way that they will be provided insight in the full documentation and case-files of the police, they will be granted access to all police premises or conduct interviews and take statements from detainees without the presence of other police officers.

The members of the IAS are appointed by the Minister. The Head of Internal Affairs (Assisting minister) and his associates (Chief of Bureau of Internal Affairs Sector, Head of Internal Affairs

[97] Police reform in Serbia- towards the creation of a modern and accountable police service, *Law enforcement department- OSCE mission to Serbian and Montenegtro*, January 2004
[98] Internal Affairs Sector http://prezentacije.mup.gov.rs/sukp/sukp_en.htm
[99] Law on Police, Official Gazette No. 101/2005 and 63/2009, article 171
Zakon o policiji, Sluzbeni glasnik RS, br. 101/2008, 63/2009, clan 171

and Head of unit for criminal-operational Affairs, as well as four Chiefs of Division in Belgrade, Nish, Novi Sad and Kragujevac) are all experts in a specific area of police work. They are highly qualified police officials with a long, over 20 years of experience in the police. This is considered to be beneficial, as it guarantees for the level of professionalism and immunity to potential political influence of the IAS.

The control over the IAS is performed by the Minister of Interior (article 177), who gives directions to the IAS, instructions for their work, as well as orders to take specific actions in their capacity. The IAS reports to the Minister of Interior upon his request and in a manner which he determines, whenever there is a need for it, while the Government or the Parliament can both demand a report on the work of the IAS from the Minister.

For the purpose of transparency of the IAS, they regularly publish brief, statistical reports on their official web-site, which contain the results of their work. From the large number of complaints that they receive (from 3621 in 2012 to 4161 in 2013), in average, they have submitted 121 criminal charges per year in the past four years. The number of police officers that have been charged was the highest in 2010 (185) and the lowest in 2013 (124). However, the number of acts of torture and ill-treatment that have been prosecuted is relatively small and varies from 4 to 6 of them per year. Others have been acquitted on insufficient evidence to initiate a procedure. This brings into question the thoroughness and legality of the investigation when charges of torture are brought up, since it is meant to provide enough and reliable evidence that will prove whether torture or ill-treatment occurred or not.

Ineffective and insufficient investigations in allegations of torture have been confirmed in earlier years in two cases lodged before the ECtHR. In the case of *Stanimirovic v. Serbia*[100], the applicant claimed to be brutally beaten with a baseball bat upon arrest and brought to the police station in 2001, punched and given electric shocks to his genitals, after which he signed a confession upon duress. Even though he brought the complaints of being ill-treated before the investigative judge on two occasions, the public prosecution decided that there were no sufficient evidence and stepped down from prosecution on torture allegations. The applicant had medical records of severe injuries he sustained from the beating, such as a broken rib and bruises on his chest. His sentence was remitted twice by the Supreme Court, since there were clear indications of violations in the criminal procedure, specifically in regard to the use of torture and ill-treatment. Yet again, charges on ill-treatment were raised again by the applicant, but the prosecution stepped down. The ECtHR found this to amount to violation of the procedural requirements of article 3. In another case, *Hajnal v. Serbia*[101] the Court found both substantive and procedural violation of article 3, as there were sufficient and clear indications that the applicant might have been ill-treated in police custody and the prosecution did not take any actions to investigate these allegations. Additionally, there were inconsistent records of when was the applicant brought to the police station for interrogation as well as a unsubstantiated signed confession of the applicant (even though he was illiterate). All these, the Court finds sufficient to conclude that the applicant was physically abused in police custody, or at least mentally coerced in giving his confession.[102]

The facts of these cases, witness that there are numerous ways in which the law-enforcement institutions can circumvent their obligations for protection of human rights which derive from

[100] Application No. 26088/06, final judgment of 08.03.2012
[101] Application no. 36937/06, judgment of 19.09.2012
[102] Ibid, paragraph 92

national and international laws. There are countless efforts to avoid accountability of police officials for their conduct, which leads to impunity and encouragement of using torture and ill-treatment as a tool in police work.

3. Complaints mechanism as internal control

One of the more important characteristics of the "community policing" concept that has been developed in the last decade is the "complaints mechanism". It represents one of the methods that would bring the citizens nearer to the police, it will offer them effective solution for their problems and would enhance the trust of citizens in the police.

An effort to achieve this has been made by Serbian legislators, as they have introduced "oversight of the police through complaints procedure"[103]. According to the law, "everyone has the right to submit a complaint against a police officer if he considers that by illegal or unlawful conduct by a police officer, his basic rights and freedoms have been violated" (Article 180, paragraph 1). After submitting a complaint to the Ministry of Interior, within 15 days of the violation, it is the responsibility of the chief commander of the department to investigate the allegations in the complaint and decide upon it. If the chief commander of the department finds grounds to believe that an *ex officio* criminal act has been committed, he then refers the case to a Committee, which is specifically formed for the purpose of deciding upon the complaints[104]. After conducting a thorough investigation, the chef commander forwards all documentation and findings to the Committee, which leads the procedure from there on.

[103] Law on police, , Official Gazette No. 101/2005 and 63/2009, article 180

[104] Statute on complaints procedure, Official Gazette No. 54/2006, based upon article 180 of the Law on police, article 2

Pravilnik o postupku resavanja prituzbi, Sluzben vesnik br. 54/2006, Na osnovu clana 180 Zakon za policiji, clan 2

The Committee consists of three members: the Head of Internal Affairs Sector or a member of IAS appointed by him, a police official appointed by the Minister and a representative of the public/civil society.[105] When the Committee is formed, the Minister appoints a president of the Committee. An important article of the Statute on complaints procedure, is one that regulates the selection of representatives of civil society in the Committee.[106] A representative of the public which takes part in the review and decision of a complaint which concerns a police official in the separate jurisdictional units is nominated by the local government but appointed by the Minister. On the other hand, a representative who takes part in the review of a complaint which concerns a police official employed in the Ministry, is nominated by the expert public and non-governmental organizations, and appointed by the Minister. This segment is of extreme importance, especially because in the selection of a civil representative, preference is given to representatives from leading human rights organizations.[107] This type of composition of the Committee provides for professional but more objective review of the complaint, since individuals of different capacity are included in the process. More importantly, the hearings of the Committee are open to the public (the public can only be excluded for the protection of personal information). This provides for transparency of the procedure and limits the possibility for biased and irregular procedure.

All procedures related to the complaints, such as receiving and processing them, forming the Committee and offering expertise, are done by the Bureau for complaints and applications, which is established in accordance with article 180 of the Law on Police. Additionally, the Bureau produces yearly reports on its activities, which are regularly published on the web-site.[108] From the

[105] Ibid, Section 5: the work of the Committee, Article 17 to 27
[106] Statute on complaints procedure, article 18, paragraph 2, 3
[107] Ibid, paragraph 3
[108] Bureau for complaints and applications with the Ministry of Internal Affairs
http://www.mup.gov.rs/cms_lat/ministarstvo.nsf/biro-za-prituzbe-i-predstavke.h

reports one can see that the citizens are keen on using this mechanism to complain about the police, as there are 185 complaints per month in the average in the past four years, with the least, 1948 complaints in total for 2013 and 2417 in total for 2010, which was the most. It is evident that there is a slight decline in the number of complaints in the past years to date, which might be an indicator that improvements have been made. According to the reports, different measures for the improvement of the complaints procedure are constantly taken into consideration.

4. National Preventive Mechanism (NPM)

In line with the obligations that derive from the OPCAT which was ratified in 2005[109], Serbia has managed to successfully establish a rather complex NPM. In 2011, amending the Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Protector of Citizens (Ombudsman) of the Republic of Serbia was designated as the NPM, and consequently was entrusted with the appropriate mandates. This was due to the outstanding reputation of the Ombudsman in protecting human rights, as well as its previous monitoring expertise performed by the "Preventive Mechanism of the Protector of Citizens" which existed within the Department for the protection of Persons Deprived of Liberty (PDLs) and was administered by the Protector of Citizens and his deputy. This Preventive Mechanism ceased to exist when the NPM was designated. Immediately after the legal grounds were established, preparations were started to define the working methods and organizational issues of the NPM.

[109] "The Republic of Serbia signed the OPCAT on 25 of September 2003, passed the Law on Ratification on 1st of December 2005 and became a State Party of the OPCAT on 26 September 2006"- Setting-up of National Preventive Mechanism in Serbia, Protector of Citizens (Ombudsman) of the Republic of Serbia, Belgrade 2012, available at: http://www.ombudsman.org.rs/attachments/090_SETTING-UP%20of%20NPM.pdf

The NPM was created as a separate organizational unit. Although the Deputy Protector of Citizens was in charge of both, the newly designated NPM and the Department for the Protection of the Rights of PDLs, they were two functionally separate units, since the purpose of the former was prevention and of the latter, re-active work.[110] In regards of the financial plan, there was a separate fund from the Budget of the Protector of Citizens allocated specifically for the needs of the NPM, in order to provide its uninterrupted performance and functional independence.[111] Additionally, the NPM was situated in separate premises in the building of the Protector of Citizens, where the staff at its disposal has personal computers, telephone lines and internet access. At the same time, a vehicle was made available precisely for the need of constant travel and transportation of the staff in order to conduct visits to detention centers. All these technicalities significantly contribute to the performance of the NPM, as they are crucial for the daily conduct of activities.

The staff of the NPM consists of 4 individuals (three of them in regular working relations), experienced and junior advisors. In accordance with the requirements of article 18 of the OPCAT, the members were selected from different areas of expertise, as two of them were lawyers and one was a special education teacher. Furthermore, the gender balance principle was also respected.[112]

The complexity of the Serbian NPM follows from the cooperation which is established on two different levels: first, the NPM has signed a Memorandum of Cooperation with Provincial Ombudsman[113]. This cooperation presupposes that the Provincial Ombudsman will take active participation in the monitoring visits that the NPM conducts and it was envisaged after a series of public debates and roundtables on the issue with national and international experts. And second,

[110] Ibid, page 12 "*Re-organization- setting-up a separate organizational unit"*
[111] According to the reports, in 2012 there were approximately EUR 75 000, solely for the performance of the NPM, not including the salaries of the staff and their contributions.
[112] Setting-up of National preventive Mechanism in Serbia, Belgrade, 2012, page 36-37
[113] On 12th of December, 2011 a Memorandum of cooperation was signed with the Ombudsman of AP Vojvodina

after several expert meetings with relevant actors and stakeholders, it was determined that the NPM shall establish cooperation with civil society associations/organizations which are well-known for their contribution and focus in the protection of human rights. In order to do so, in December 2011 the Protector of Citizens announced a public call for applications of eligible civil society associations, which will be selected to participate in preventive monitoring visits to places of detention. The decision making was left to 4 members of a specially formed Commission, which consisted of the Deputy Protector of Citizens, the deputy Provincial Ombudsman, Deputy Commissioner for Information of Public importance and Personal Data Protection, Madam Assistant Commissioner for Protection of Equality and Madam Secretary General of the Protector of Citizens` Technical Service.[114]

After an expert evaluation of the applications of 9 associations/organization which applied, the Commission decided that the NPM should establish cooperation with all of them. What is particularly significant is that it was decided that specific organizations will participate in monitoring visits in specific places of detention and will have the opportunity to produce individual reports. In that sense, the Belgrade Center for Human Rights was in charge of monitoring of police stations, the Helsinki Human Rights Committee was determined to participate in prisons` monitoring, a Mental Disability Rights International Serbia (MDRI-S) will monitor social welfare institutions, the International Aid Network (IAD) will monitor mental hospitals, the situation with minors in prisons and detention centers was left to an organization called Dialogue and the Committee for Human Rights- Valjevo, and finally the Victimology Society of Serbia will be monitoring the situation of women deprived of liberty. In 2013, not only these, but other

[114] Setting-up of National preventive Mechanism in Serbia, Belgrade, 2012, page 15

associations as well participated in activities of monitoring place of detention.[115] Furthermore, the NPM is often included in different projects on torture prevention with both national and international organizations and networks.[116]

4.1 Reports review

As stipulated in the OPCAT, the NPM has the obligation to submit yearly reports on its activities and findings. The Serbian NPM, since its establishment, has so far produced 2 yearly reports (for 2012 and 2013)[117] and a number of separate reports after each visit they have conducted, and all are published on the official website of the NPM. Additionally, the individual associations which the NPM cooperates with, have also produced individual reports. In 2012, the NPM has conducted monitoring visits to 41 police stations and 38 were visited in 2013. In both years they encountered below-standard conditions in most of the police premises meant for detainees in police custody. The bad conditions were due to the lack of financial means to renovate the facilities and the NPM made recommendations that such means should be provided in order to improve the conditions.[118] In regards to torture and ill-treatment, the NPM concluded that "there was no evidence of torture in police conduct in terms of being organized, encouraged or supported by the system, however individual instances of ill-treatment were identified."[119] In individual cases, visible bodily injuries were detected on a detainee brought in custody, however the police officers had not provided any evidence to indicate that the injuries were sustained before the arrest, which is required in this kind

[115] 2013 Report of the National Mechanism for the Prevention of Torture, Belgrade 2014, available at: http://www.npm.lls.rs/attachments/067_NPM%20izvestaj%20engl.pdf , page 21
[116] For example, the OSCE Mission to Serbia, the UNHCR etc.
[117] The reports of the NPM are available on both Serbian and English http://www.npm.lls.rs/index.php?option=com_content&view=category&layout=blog&id=6&Itemid=14
[118] National Preventive Mechanism of Republic of Serbia- 2012 Report, published in April 2013, Belgrade, page 33 http://www.npm.lls.rs/attachments/038_NPM%20%20report.pdf
NPM Report for 2013, page 30
[119] NPM Report for 2012, page 34

of situation. The significance in this case however, which the NPM especially emphasized is that the Sector for Internal Affairs had not identified any irregularities in the conduct of police officers. This the NPM finds concerning, and in both reports of 2012 and 2013 particularly underlined that the mechanism of internal control is not yet completely independent and professional in its work, which leads to lack of accountability and impunity.[120] In 2013, the NPM concluded that the use of coercive means in situations of deprivation of liberty has increased in the past year. It is within the NPM`s opinion that this is due to the Instructions on handling of Arrestees and Detainees and its provisions which stipulate that "during transportation, detainees shall be restrained"[121] As the NPM points out, this measure is unnecessary and leads to violation of human dignity and integrity, as often times police officers use excessive use of force to restrain the person. Therefore, recommendations were made by the NPM that this and other problematic provisions of the Instructions should be amended.[122]

In its reports, the NPM points out recommendations to separate institutions according to its findings. In that sense, there are specific recommendations to police, to prison facilities, psychiatric hospitals etc. The NPM`s recommendations are also delivered to decision-making institutions. Usually, after the reports i.e. recommendations are disseminated to relevant institutions, it is encouraged that individual meetings take place, in order to discuss the findings of the NPM, to decide whether these institutions consider the recommendations acceptable and feasible. The follow-up visits of the NPM are used as a mean to ensure that these institutions have implemented the recommendations and improved the conditions.

[120] NPM Report of 2012, page 32
[121] Article 13, paragraph 2 Instructions on handling of persons in police custody and detainees- issued by the Ministry of Interior, 10.12.2012, Belgrade, page 11
[122] NPM Report 2013, page 34

Conclusion

This chapter will take in consideration the following: firstly it will summarize the strengths and weaknesses of international instruments and mechanisms, their correlation with each other, and consequently, their significance to individual states. Secondly, it will provide for a comparative analysis of all instruments and mechanisms for monitoring and torture prevention in both Macedonia and Serbia, their set up, advantages and disadvantages, similarities and differences. Finally, in light of the strengths and weaknesses of the above mentioned, it will make an effort to suggest where can improvements be made.

An important part in the fight against torture plays the system established by the Council of Europe. Firstly, the ECtHR based on the ECHR, plays a significant role through establishing substantive case-law on violations of article 3. The decisions by the ECtHR serve for interpretation of the prohibition of torture establishing states` positive and negative obligations in this regard. In its rulings, the ECtHR has shown that torture allegations must not be considered in isolation, but all the surrounding circumstances must be taken into account. At the same time, its judgments are legally binding and States are obliged to enforce them and remedy the violation. However, although the Committee of Ministers of the ECtHR is responsible for the supervision of execution of judgments[123], it is often the case that states do not actually enforce them in practice.[124]

CPT findings often have a significant role in the decision-making of the ECtHR. Their relation is therefore complementary. Unlike the ECtHR, the CPT has a preventive character and although it offers confidentiality to state parties, its reports are most often publically published (which is a

[123] Article 46 of the ECHR
[124] The Execution of Judgments of the European Court of Human Rights: Limits and ways ahead- Deborah Frost, Vienna Journal on International Constitutional Law, March, 2013, available at: https://www.icl-journal.com/download/f1527ce403500a9ec58b8269a9a91471/ICL_Thesis_Vol_7_3_13.pdf

decision of the individual state). Since the implementation of CPT`s recommendations by states is not always guaranteed under various excuses, the public reports are a means to pressure governments to take action, especially if they gain international attention.

The CAT plays a significant role, in monitoring the implementation of the UNCAT by reviewing four-yearly reports by the State parties. More importantly, the capacity of the CAT to examine individual complaints and conduct inquiries is a stronger advantage, especially because it gives voice to individuals who consider their rights have been violated in contrary to the UNCAT. In its decisions the CAT gives its opinion and often urges states to take specific measures to prevent or remedy the situation. However, although the CAT asks from states to report back of the steps that they have taken, its opinions are not legally binding and states may very well choose not to take any action. Therefore, the CAT`s opinions do not put actual obligation on States but are highly important in advocacy processes either on national or international level.

Introducing the OPCAT was a significant step forward in the prevention of torture worldwide. Although an Optional Protocol of the UNCAT, it is considered to be more of a supplementary document, since it established two new mechanisms for preventive monitoring mechanisms. The SPT, conducts monitoring visits to places of detention, which unlike the CPT are announced in advance to the states and does not require invitation. The main difference between the SPT and the CPT is that the SPT has a significant role in ensuring the implementation of the OPCAT, and that refers to ensuring the effective establishment and functioning of the NPMs and productive cooperation of all relevant national actors in torture prevention, including civil society. Although the SPT and CPT`s method of work often overlaps, there are differences which enable them to supplement each other.

There are several key advantages in the establishment of the SRT as UN`s special procedures. It represents independent, expert, fact-finding missions to critical areas where widespread systematic use of torture occurs. Its reports (submitted once a year before the Human Rights Council) gain the attention of the international community and have the widest outreach. This is highly significant, as often times the reports of the SRT contain the most brutal and defeating findings of the reality.

All of the preventive mechanisms set-up on international level play an important role in monitoring the implementation of international treaties on national level. However, they often lack enforcement capacities and their recommendations, advisory opinions or reports can only be used for advocacy purposes or for putting pressure on individual states for the implementation of international standards and principles.

While both Macedonia and Serbia have incorporated the absolute prohibition of torture, inhuman and degrading treatment in their Constitutions, differences can be seen in the criminalization of the act of torture. In Serbian Criminal Code, torture by private individuals also constitutes a criminal act punishable by law, while torture by a person acting in official capacity represents an aggravated circumstance for which a higher punishment is predicted. In this regard, according to official statistics by the Ministry of Interior, the crime rate of acts of violence (murder, aggravated assault) has decreased in the past few years.[125] In comparison, the number of reported acts of torture, inhuman or degrading treatment by police officials, either to state institutions, the ombudsman and NGOs, has increased in the past few years. One can conclude that Macedonia might not have the need to criminalize torture by private individuals since the rate of violent

[125] Official crime rate statistics of the Ministry of Interior in Macedonia http://mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=394

criminal acts does not represent an alarming threat, while abuse by police officials does. Consequently, the system for protection of individuals deprived of their liberty should be strengthened. In relation to this, while Serbian Ministry of Interior has decided to introduce Instructions for Handling of Persons in Police Custody and Detainees, a document which strongly contributed to the prevention of torture in police custody, Macedonia has in effect a Statute for the Exercise of Police Authorities. Macedonia lacks a content-specific, to the point document which will closely regulate rights of detainees in police custody and the duties of police officers, such as the one of Serbia. The existence of such document might contribute for the prevention of torture, inhuman or degrading treatment in police custody.

Comparing the two countries in the set-up of mechanisms for control of the work of the police, one can notice the following: in Macedonia, there is a clear distinction between internal and external control of police work (determined in the Law on Internal Affairs), while in Serbia, the situation is a bit more complex. The Sector for Internal Control and Professional Standards conducts the internal control of police in Macedonia, while a parallel of this mechanism in Serbia is the IAS. Although in some parts these monitoring mechanisms have the same role distinctions can be noted in the professionalism of the staff and the independence of the body. In this regard, the SICPS of Macedonia could be improved by selecting more experienced staff members who will preferable not be politically affiliated. This might contribute to the independence of their work. At the same time, the principle of transparency must be respected by the Macedonian SICPS as it is the main responsibility of democratic institutions. Their reports must be regularly published on the official web-site and should be coherent and comprehensive.

The external control over the police in Macedonia is exercised by the Parliament, through the existing Parliamentary Commission for Defense and Security and the Ombudsman. In Serbia there

is no specifically determined monitoring mechanism for external control of the police, but this responsibility is given to the parliament, judiciary and other public institutions, through submitting general reports on the work of the Ministry of Interior. However, the fact the in Macedonia there is a specifically determined Commission in the Parliament for monitoring of police work, does not provide for a more effective monitoring. In fact, the highly political character of this body immediately brings into question its independence. Additionally, the PCDS has proved to be completely useless monitoring mechanisms as its functioning is dependent on the political situation in the country and no results of its work have been seen in the past. In Serbia on the other hand, there is a specific monitoring "complaints mechanism" established, which might be considered an achievement to some extent. This procedure, upon complaints of individuals conducts investigations into the allegations. Most important is the composition of the commission which examines the complaints, which besides authorized police officials, includes a representative of the public/civil society. This highly contributes to the way in which this mechanism is perceived by the public as well as to the level of independence and professionalism.

With the Ombudsman being designated as the NPM it fulfils its duties as external control over the work of the police. There are significant differences between the establishment of the NPM in Macedonia and Serbia. The Macedonia NPM operates with a limited number of staff and budget which affects its work. The lack of separate budget for the NPM (even allocated from the budget of the Ombudsman) makes it difficult to achieve the desired level of independence. Most importantly, until recent times, the NPM in Macedonia operated as a closed and isolated mechanism, without the required cooperation of other civil society organizations. On the contrary, the Serbian NPM since its establishment has based its performance on cooperation with provincial ombudsmen and other civil society organizations (NGOs and associations). In this way, it has

provided for a diversity of professions in conducting preventive visits and enhanced the expertise of the NPM. The Macedonian NPM has made an effort in the past year to begin cooperation with expert associations, however the outcome of which remains to be seen.

In conclusion, in order to establish a more effective system of torture prevention on national level, there must be monitoring and control mechanisms with complete independence and professionalism. The Internal control mechanism in Macedonia should be fully separated from political influence and staffed with experienced individuals from the line of police work. External mechanisms on the other hand, such as the Parliamentary Control, should include civil society or representatives of the public which will provide for a more objective yet professional approach. The Macedonian Ombudsman should be established in line with the Paris Principles and fulfil its role in accordance. The NPM on the other hand should be provided with sufficient resources (both human and material) that would provide him with the necessary independence. Ultimately, there must be a solution found in order to introduce civil society insight and control into the work of the police in Macedonia. In Serbia, serious deficiencies can be noted in the thoroughness and effectiveness of the investigations in the IAS. An effort to overcome this problem should be made by establishing enhanced supervision over the investigations in allegations of torture in every segment of the criminal procedure. These conditions must be met, in order to deal with the systematic practice of torture and inhuman treatment and lead the way to its eradication.

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