

UNIVERSAL PERIODIC REVIEW OF MACEDONIA

JOINT STAKEHOLDER SUBMISSION

by Metamorphosis



and the
Association for Progressive Communications (APC)



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SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF MACEDONIA

Joint Stakeholder Submission

Executive Summary

- 1) This submission is made by Metamorphosis Foundation and the Association for Progressive Communications. Metamorphosis Foundation is an independent, non-partisan and non-profit foundation based in Skopje, Macedonia. Its mission is to contribute to the development of democracy and increase the quality of life through innovative use and sharing of knowledge. APC (which has general ECOSOC consultative status) is an international network focused on ensuring all people have access to an open and free internet access to improve their lives and create a more just world.
- 2) The UPR must include a review of State performance in relation to the promotion and protection of human rights and fundamental freedoms on the internet, particularly freedom of expression and freedom of association.¹ In 2011 the Human Rights Committee noted that freedom of expression includes internet based expression.² Member States' existing human rights obligations³ extend to taking steps to ensure access to the internet and that limitations or restrictions on freedom of expression online comply with agreed international standards.⁴ In 2012 Macedonia signed a resolution declaring that the same rights that people have offline must also be protected online.⁵
- 3) This submission focuses on freedom of expression, freedom of press, privacy and hate speech. These fundamental human rights have been threatened in light of recent changes to laws in Macedonia, particularly with regards to media freedom.

Follow-up on recommendations made in the first UPR of Macedonia

Freedom of expression and press

- 4) In its first review in 2009, Macedonia accepted the recommendation by Switzerland “to adopt all necessary measures so as to ensure freedom of speech and protection against any interference in the freedom of the press”⁶ as well as a recommendation made by Norway to “map out to what extent media owners seek to influence journalists and adopt appropriate measures to prevent the mixing of private interests with journalism.”⁷
- 5) Despite accepting this recommendation, Macedonia's media has become increasingly controlled

¹ Human Rights Committee, General Comment 34, Freedoms of Opinion and Expression, (21 July 2011, CCPR/C/GC/34).

² Ibid, para 12.

³ The UPR monitors existing human rights obligations: Human Rights Council, Institution-building of the United Nations Human Rights Council (18 July 2007, A/HRC/RES/5/1, affirmed in Resolution A/HRC/RES/16/21).

⁴ Frank La Rue “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” (26 April 2011, A/HRC/17/27).

⁵ <https://www.apc.org/en/node/14772/>

⁶ UPR of Macedonia, Report of the working Group, para 35

http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MK/A_HRC_12_15_MKD_E.pdf

⁷ UPR of Macedonia, Report of the Working Group, para 39

http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MK/A_HRC_12_15_MKD_E.pdf

by the government. The latest Press Freedom Index report by Reporters Without Borders ranked Macedonia as 116th in the world, a drop of 82 places since 2009.⁸ Many media outlets are owned by private actors close to the government, while money from government marketing campaigns has forced media organisations to be financially dependent on the government. The State directly regulates the work of TV and radio stations through the Law on Broadcasting, implemented by the regulatory body Broadcasting Council of the Republic of Macedonia⁹. In 2011, The Parliament appointed two new members of the Broadcasting Council from the ruling political party, thereby violated the procedure regulated under Article 29 of the Broadcasting Law.¹⁰

- 6) A new Law on Media and Audiovisual Media Services expands state control of media, including online and print, centralizing power to impose sanctions and heavy fines within a new Agency for Media and Audiovisual Services, with no representation from civil society¹¹. Article 56 of the draft law includes provisions for the Agency to limit transmission or reception of media content from other countries, which could be used to block platforms such as YouTube¹². In his recent trip to Macedonia, the Special Rapporteur expressed concern about the law, including that civil society had not been consulted in the original drafting.¹³
- 7) On December 24 2012, amidst protests against the 2013 State budget, journalists were forcefully expelled from the main hall gallery of the Macedonian Parliament and were thus unable to cover the session on which the budget was to be adopted.¹⁴ This form of press censorship violates Articles 16 and 70 of the Constitution of the Republic of Macedonia, Article 19 of the Universal Declaration of Human Rights, Article 10 of the European Convention for Human Rights, and Articles 2, 225 and 227 of the Rules of Procedure, excluding the public from the work of the Assembly.¹⁵ Disputes remain unresolved, despite claims by legal experts and human rights defenders that these actions were unconstitutional and unlawful.¹⁷
- 8) Of further concern is ongoing civil defamation lawsuits against prominent media groups. Despite decriminalising defamation in November 2012, fear of heavy fines and accusations of arbitrary judgements has resulted in higher level self-censorship within media outlets, imposing further restriction on freedom of expression and press.¹⁸ A notable case was that of Nikola

⁸ Reporters Without Borders: Press Freedom Index 2013. <http://en.rsf.org/press-freedom-index-2013.1054.html>. Comparison provided by Truth-meter as part of the analysis of the ruling party electoral promise that they would increase freedom of media. <http://vistinomer.mk/vmro-dpmne-sloboda-na-mediumite/>

⁹ Broadcasting Council of RM, www.srd.org.mk

¹⁰ Broadcasting Law from 2005 <http://bit.ly/1aHZo7E>

¹¹ <http://www.osce.org/fom/102135>

¹² http://mdc.org.mk/wp-content/uploads/2013/05/MDC_Analysis-of-the-draft-law-on-media-and-audiovisual-media-services_May-2013.pdf

¹³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13479&LangID=E>

¹⁴ Marusic, S.J. (Dec 24, 2012) Tensions Rise as Macedonians Clash Over Budget. Balkan Insight. <http://bit.ly/UZLQun>;
Stojanovski, F. (Dec 25, 2012) Journalists, Opposition Thrown Out of Macedonian Parliament Amid Street Protests. Global Voices. <http://bit.ly/UZLQun>.

¹⁵ Helsinki Committee of the Republic of Macedonia. Special Report: Assembly of RM, December 24, 2012. <http://bit.ly/ZrUNEr>.

¹⁶ European Commission's (EC) Progress Report, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf

¹⁷ The events of December 24 and subsequent reactions were documented by FOSM in "Black Monday" <http://t.co/46giE3MzyW>.

¹⁸ <http://www.balkaninsight.com/en/article/macedonia-decriminalizes-libel-tightens-rules-on-foreign-media>

Mladenov, founder and managing editor of *Fokus*, a weekly newspaper, which stopped printing after the tragic and controversial death Mladenov.¹⁹ At the time of Mladenov's death, *Fokus* was facing financial ruin due to exuberant fines from three ongoing defamation cases, including from the Head of Counter Intelligence and the manager of a dominant print media company, with ties to the government.²⁰

Online privacy and surveillance

- 9) Legislative changes, particularly the amendments to the Law on Interception of Communications in September 2012²¹, have expanded the state power for unaccountable surveillance, without creating mechanisms for citizen control. Several state bodies now have the power to use surveillance technology without obligations to be accountable to the public, including the Ministry of Interior, Customs and the Financial Police. There is no public record of implementation of the existing mechanisms for control of the work of the security forces and the heavily funded intelligence agencies, including interventions by Parliament, its Committee for Supervising the Work of the Security and Counter-Intelligence Directorate, the Intelligence Agency, and the Ombudsman.
- 10) Lack of legislative framework and public awareness regarding digital privacy and online surveillance remains an issue in the country, particularly for vulnerable groups. The Special Rapporteur on the rights of freedom of opinion and expression's recent report on surveillance provides important guidance for Macedonia, including recommendations that States "be completely transparent about the use and scope of communications surveillance techniques and powers".²²

Hate speech

- 11) In 2009 Macedonia accepted the recommendation from the Czech Republic to "take further concrete measures to strengthen relevant legislation to combat discrimination; organize awareness-raising campaigns to combat all forms of discrimination including those based on gender, ethnicity, sexual orientation or gender identity."²³
- 12) Conflict between groups in Macedonia and Bulgaria, as well as Greece, among others, are prevalent in online and offline media.²⁴ Political and economic tension in the country renders journalists susceptible to using hate speech and inciting discrimination against others. In several cases, the Ministry of Interior has issued public statements indicating²⁵ that it monitors online social networks under pretext of preventing hate speech, and that it cooperates with foreign media on blocking such content. While the response to pages and profiles promoting hate

¹⁹ Sekulovska, B. (08.05.2013). "Public Prosecutor Silent on Nikola Mladenov Investigation" [mk]. Nova TV <http://www.novatv.mk/index.php?navig=8&cat=2&vest=3313>

²⁰ <http://www.novatv.mk/index.php?navig=8&cat=2&vest=3313>

²¹ Official Gazette of the Republic of Macedonia No. 121/2006. <https://www.privacyinternational.org/reports/former-yugoslav-republic-of-macedonia/ii-surveillance-policies>

²² A/HRC/23/40, para 91

²³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf

²⁴ A Single Facebook Post Has Greece and Macedonia at Each Other's Throats. Business Insider, <http://read.bi/RErU0A>.

²⁵ Macedonian ministry monitors protest calls, urges tensions to be eased, http://www.china.org.cn/world/Off_the_Wire/2013-03/08/content_28168873.htm

speech and direct discrimination is unclear, a number of activist pages, profiles and groups have been shut down by Facebook. These included social media presences set up by nonviolent movements against police brutality in 2011, the March for Peace in March 2012, and the movement for social and economic justice in 2013.

Recommendations

13) We recommend that the government of Macedonia

- a) Take steps to ensure media freedom and protection for journalists in the country, including protection from political pressure and undue civil defamation lawsuits. Ensure that fines imposed for insult and defamation according to the Law on Civil Responsibility for Defamation are proportional both to the harm caused and to ability of the journalists and media to pay.
- b) Strengthen efforts to ensure constitutional rights of privacy, data protection and secrecy of communications.²⁶ Ensure adequate legal frameworks governing communications surveillance that adhere to recommendations made by the UN Special Rapporteur on the rights to freedom of opinion and expression in his 2013 report.
- c) Adopt and enforce standards for all e-government websites, including development of procedures and publishing a privacy policy demonstrating adherence to the Law on Personal Data Protection and proactive implementation of the Law on Free Access to Information of Public Character.²⁷
- d) Take steps to ensure transparency in government decision-making, including allowing all stakeholders sufficient opportunity to comment in all stages in the drafting and development of legislation²⁸.
- e) Ensure that any limits to freedom of expression are provided by law and in accordance with Article 19 of the International Covenant on Civil and Political Rights (ICCPR). National law and practice should distinguish undoubtedly between the responsibility of the author of expressions of hate speech, on one side, and any responsibility of the media and media professionals contributing to their dissemination as part of their role to convey information and ideas on matters of public interest on the other side.
- f) Ensure constitutional protections make it clear that freedom of expression in Macedonia includes internet related expression, in accordance with the Human Rights Council Resolution on freedom of expression and the internet and General Comment 34 on Article 19 of the Human Rights Committee.²⁹

²⁶ Article 25 of the Constitution of Macedonia

²⁷ http://www.metamorphosis.org.mk/en/publications/doc_details/75-macedonia-online-privacy-in-2009-report-draft

²⁸ International Media Freedom Mission to Macedonia Report, <http://www.znm.org.mk/drupal-7.7/sites/default/files/International%20Media%20Freedom%20Mission%20to%20Macedonia%20Report%20ENG%20May%202012.pdf>

²⁹ Frank La Rue “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” (26 April 2011, A/HRC/17/27), page 21, note 3.