

To: Human Rights Committee
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**Updated information for the consideration to the Human Rights
Committee regarding the review of the Third Periodical Report of the
Republic of Macedonia under the International Covenant on Civil and
Political Rights, 114nd Session, 29 June - 24 July, 2014**

June, 2015

SUBMITTING ORGANISATIONS

H.E.R.A.-The Health Education and Research Association was established in January, 2000. The Association works to promote the inclusion of sexual and reproductive health and rights in national legislation and strategies. HERA annually provides health, social and legal services to 2,600 women, mostly Roma women, who are the most at risk community in the country. HERA is a member of the International Planned Parenthood Federation (IPPF).

The Helsinki Committee for Human Rights of the Republic of Macedonia (MHK) was formed on 23 October, 1994 as a non-governmental organization working for the promotion and protection of human rights, without any political and religious orientation. MHK’s objective is to raise awareness about the concept of human rights and freedoms based on international human rights documents. MHK monitors the situation with human rights, provides legal aid to citizens in cases of violation or limitation of their rights and freedoms and cooperates with other organizations and state bodies for the purpose of increasing the promotion, respect and protection of human rights and freedoms.

Reactor – Research in Action is an independent think-tank based in Skopje, Macedonia. Reactor is committed to facilitating Macedonia’s EU integration process by providing timely and relevant research, proposing evidence-based policy alternatives and actively working with citizens, civil society organizations and the policy community. Gender equality is one of the three areas where its research is focused, with specific attention on women’s participation, inclusion and economic integration, as well as violence against women.

The Coalition “Sexual and Health Rights of Marginalized Communities” (SHRMC) was formally established in 2010 as an alliance of five different organization (HOPS, HERA, IZBOR, STAR-STAR and EGAL). SHRMC promotes the protection and respect of the fundamental human rights of marginalized communities such as sex workers, drug users, people living with HIV and LGBTI people. The main areas of its work are: increasing access to quality health, social and legal services; advocating for laws, policies and practices that prevent discrimination and other human rights violations of marginalized communities; and legal empowerment and stronger participation of marginalized communities in the struggle for the realization of their rights and freedoms.

I. SUMMARY

1. We have jointly prepared this information to supplement the information available to the Human Rights Committee in the examination of Republic of Macedonia on its implementation of the International Covenant on Civil and Political Rights.
2. The government’s response to the LOI (Question 7, paragraphs 30-34) makes reference to the changes in the law in relation to abortion; however, the response does not address the numerous concerns that civil society has raised about the ways in which the changes in the abortion law fall short of the requirements of the Covenant, in relation to Articles 2, 3, 4, 5, 6, 7, 17 and 26. The government has given no explanation of why the law was changed and has not been able to point to any improved health outcomes for women. It has neither addressed the fact that the change in the law was part of a widely disseminated anti-abortion government campaign, which was grounded in gender stereotypes that are contrary to the Covenant and to the Committee's previous recommendations to Macedonia.
3. In this submission, we provide information and concrete case studies on the impacts, individually and cumulatively, of the measures included in the new law. We highlight that the new measures are designed to shame and stigmatise all women who access abortion services, to make access to abortion more difficult for many women, as well as that they are likely to worsen health outcomes or cause unnecessary physical and mental health harms to women.

In particular, we provide additional information on the following issues:

1. Introduction of new legislation on abortion - the Law on Termination of Pregnancy - which raises concerns about State compliance with the Covenant in that: (1) the Law was adopted in a short and non-transparent procedure, without consulting experts and without any public debate; (2) the legislation includes provisions that were not contained in previous legislation; these new barriers (i.e. mandatory request, mandatory counselling and mandatory waiting period) create significant new and discriminatory legal barriers to women's access to legal abortion and thereby have serious consequences for women's health, and are humiliating and degrading to women, contrary to human dignity and the fundamental rights to privacy and confidentiality;
2. A Government campaign against abortion that aimed to stigmatise and discriminate against women who choose abortion and that illustrated State attitudes based on gender stereotypes;
4. The actions taken by the State and described here are retrogressive and are not in compliance with the Covenant. The 2013 Law is more restrictive than the previous (1976) Law and introduces new legal barriers in Macedonia. The Law was introduced through a non-consultative and accelerated process that ignored the recommendations of international and Macedonian health expert bodies. The new provisions introduced have no health related rationale, and indeed have significant potential to endanger women's physical and mental health. The Law was introduced in conjunction with a widespread anti-abortion government campaign. Notwithstanding the clear intention of the law to make women's access to lawful abortion more difficult, contrary to the impression given in the state's response to the list of issues, no measures to enhance access to contraception have been introduced. In a context of low access to information on family planning, the Law would negatively affect the health and life of women in general, and in particular those who due to reasons related to poverty, gender inequality or family violence will be forced to seek unsafe abortion services. It should be noted that unlike other medical procedures abortion is not covered under national health insurance, so that women must incur the costs of the procedure. Four case studies illustrate the harmful impact of the new law on women's health:

Case study 1

On 05.09.2013, due to injuries caused by a fall from a height, a woman with physical and mental disabilities was received in the emergency ward of the Clinical Centre in Skopje. During the examination and provision of health services by the medical staff it was established that the patient was pregnant, after which she was transferred to the Gynaecology and Obstetrics Clinic. The next day, during the gynaecological examination, the pregnancy was confirmed, while during the ultrasound exam it was established that the foetus was dead. That same day the woman was released from the Gynaecology Clinic with the explanation that she is not bleeding and that this did not represent an emergency situation, while also recommending monitoring of the situation. On 09.09.2013 the woman reported back to the Gynaecology Clinic for the purpose of having an abortion, but according to the statements of the staff she was informed that three days have to pass before an abortion can be performed. Following an intervention by an NGO, the abortion was performed on 11.09.2013 or 5 days after the day when it was established that the woman was carrying a dead foetus.

Case study 2

"I was bleeding for three weeks already and I didn't know what was wrong with me. On 12.09.2013, with a regular referral from my family physician, I went to the Gynaecology Clinic to have an abortion because I had a hematoma and I couldn't keep the foetus. I was not hospitalized after the examination at the Gynaecology Clinic. The doctor told me that I should have gone back to my family physician so he can explain to me the new abortion law. His exact words were "Don't you follow the media, don't you watch the news." I came back home. The following day I went back because I was in a lot of pain. After several

attempts and another examination I was referred to a social worker and a psychologist to receive counselling on the abortion procedure. After I signed the consent form I was not accepted in the hospital, but I was turned back and told I will have the intervention after 3 days. I had the abortion on 16.09.2013” – testimony from October 2013.

Case study 3

In October 2014, a woman who was carrying a foetus diagnosed with serious malformations was not allowed to choose an abortion as her health was not judged to be directly under threat. “During the humiliating process of counselling, a counsellor tried to persuade me to keep the baby by saying that it “may not be beautiful, but it will be intelligent”. The procedure for terminating the pregnancy was not being properly and fairly implemented. When the pregnant woman wanted to file her request for the termination, she was told that the form did not exist and that she had to create her own because the hospital had not received by –law guidance on the form and content from the Ministry of Health, as laid down in the law. The time was a serious consideration because it was a case of pregnancy after the 10th week.

After the woman managed to file a request on her own, the primary commission (expert committee) made no official decision and simply forwarded it to a secondary commission. She was also asked to file a new request for the secondary commission. This represents a significant breach of the law because the secondary commission can process only cases referred from the primary commission. In this example the secondary commission functioned on the primary level. The secondary commission should be appointed by the Minister of Health and the bureaucratic process took a long time. Eventually, the secondary commission and the Minister of Health himself decided that the legal terms for abortion were not met and refused to allow the termination of the pregnancy, even though the woman still legally had the right to access the procedure. At the end, the women filed a plea to the Administrative Court and had no other option but to keep the pregnancy.

Case study 4

In September 2014, a 30-year- old women in the 7th month of pregnancy, found, during a regular medical check-up, that the pregnancy might be life threatening, and she was advised for abortion. After a second opinion from other gynaecologists, she was admitted at the State Gynaecological Clinic. She was informed that because it was a case of pregnancy after the 10th week she needed a decision from the primary commission. But the commission meets only once a week, and she was forced to wait for its next meeting. The women had to wait for 4 days before meeting the Commission that consisted of a gynaecologist, a psychologist and a social worker. “Though I had the knowledge that I was carrying a ticking bomb inside me, I had to run between desks and commissions and to wait several days in order to obtain consent for terminating the pregnancy.” After going through the documents and medical evidence showing that the chances of having a healthy child were very low and that the mother’s health was in danger, the primary commission insisted on another medical examination and the woman was told that there might be a need for confirmation from the secondary commission. The woman and her husband stated that they would initiate legal proceedings against the members of the commission if they unnecessarily and unlawfully prolonged the process by referring the case to the secondary commission. Finally, the woman was granted a permit to terminate the pregnancy. The gynaecologist who performed the abortion told her “If you waited a minute longer I am afraid we couldn’t have saved you!”

II. BACKGROUND

5. The Republic of Macedonia in its Third Periodic Report on the International Covenant on Civil and Political Rights¹(Paragraphs 150 and 152) reports on the progress of sexual and reproductive health services and the improvement of protocols. However, the report does not cite any reasons for the changes in the legislation regulating abortion. The number of abortions in the country has been steadily decreasing: the abortion rate in Macedonia in 2000 was 38.9 per 100 live births²; by 2012, the rate had fallen to 23³.
6. It should also be mentioned that abortion can only be performed in gynaecological-obstetrics hospitals and not in primary health care institutions. Those women particularly affected by this restriction are women who have to travel a long distance to the health institution, women who do not have access to reliable forms of transportation, women who cannot take leaves of absence to visit the institution due to work or child care duties or fear of stigma, women from marginalized groups, women who live in rural areas and poor women.
7. As confirmed by the information on the low number of prescribed contraceptives on an annual level in the state's response to the list of issues, the access to modern methods of contraception in Macedonia is very limited.⁴ The most recent Multiple Indicator Cluster Survey (2013) conducted by UNICEF shows that the usage rate of any type of modern method of contraception in women between 15 to 49 years of age is just 12.8%⁵.
8. Although in 2011, the Government of the Republic of Macedonia adopted the National Strategy for Sexual and Reproductive Health 2010-2020, it has not adopted action plans for its implementation, neither has it allocated resources for its implementation. The main reason cited for this was the decision not to provide oral hormonal contraception as part of the health insurance. The national laws are guaranteeing health insurance covering different medical services and medicines for all citizens, but still oral or other modern forms of contraception are not enlisted in the "positive list" of medicines that is covered by the insurance fund.
9. Access to information on sexual and reproductive health in the state curricula is limited. While the state's response to the list of issues is indicating that "lectures are also held in schools about contraception and planned pregnancy", in fact, the reality is different and a recent research⁶ among high schools students shows that 21% of them stated they had received information on family planning, 22% on condom use and only 8.5% on oral contraception during the biology classes. Contrary to the impression given in the state's response about the Counselling offices for family planning and contraception throughout the country, the State Public Health Institute report in 2014⁷ is underlining many challenges. The evaluation has found that in these offices there are no appropriate premises, no definition of working hours, absence of trained personnel and gynaecologists, low number of clients. The main reason for this is that there was no state funding secured after the internationally supported project was finished.
10. Furthermore, another worrying issue is the infant mortality rate that is 10.7 dead per 1000 live births⁸, which is several times higher than the European average of 4.2 dead per 1000 live births. There is no evidence of implementation of the basic package of antenatal services which was part of the Government Action Plan for reducing maternal, prenatal and infant mortality(2013-2014) as an important measure to further cope with the financial barriers that women, especially socially excluded women, are facing when accessing antenatal care services.

III. THE NEW LAW ON TERMINATION OF PREGNANCY

i) The New Law

11. Following a three year government campaign against abortion, the new Law on Termination of Pregnancy was adopted and came into effect on 25.06.2013⁹. The campaign is still ongoing to this day.

12. Despite the concerns raised by citizens and experts, the new law was adopted with the proposer of the Law removing only the requirement for a husband's consent for an abortion which was included in the bill as first proposed.

13. In the new law abortion remains available on request. After the 10th week, abortion must be approved by a Primary Commission appointed in the medical institution. If the request is rejected, a Secondary Commission appointed by the Minister of Health will reach a final decision. However, the new law introduced the following requirements that jeopardize women's health and life:

1. Mandatory filing of a written request for the termination of unwanted pregnancy by the woman to the appropriate health institution,
2. Mandatory biased counselling: .i.e. counselling that focuses on the potential advantages of continuing the pregnancy, and on potential health risks for the woman from undergoing an abortion,
3. Mandatory waiting period of three days after counselling before medical intervention is conducted to terminate the pregnancy.

14. 70 NGOs have filed a request to the Ministry of Health for the Law to be withdrawn,¹⁰ while a letter from the Parliamentary Assembly of the Council of Europe signed by 20 MP's was sent to the President of the Government of the Republic of Macedonia (RM) in September 2013¹¹. The letter stated the following:

The law fails to correspond to any international or European standards regarding termination of pregnancy, reproductive rights or fundamental freedoms (World Health Organisation Guidelines, Assembly Resolutions 1399 (2004), 1607 (2008). Mandatory ultrasound, waiting periods and a written request are humiliating and degrading to women, contrary to human dignity and the fundamental rights to privacy and confidentiality spelled out under the Constitution of "the former Yugoslav Republic of Macedonia".

15. Studies assessing the impact of abortion restrictions, such as parental involvement laws and mandatory counselling and waiting period requirements, have found either no effect on abortion incidence or at most a very modest one.¹² Such laws do not deter women from having an abortion, but can have a severe financial and emotional impact on women. Research also shows that while the most coercive laws, those that significantly raise the economic cost for women seeking abortion care, can have some impact on abortion incidence, they do so in discriminatory and rights-violating ways by making abortion unattainable for the poorest and most vulnerable women.¹³

ii) Mandatory three-day waiting period (Articles 6, 7, 17 and 26)

16. The Macedonian Law on Termination of Pregnancy¹⁴ restricts the constitutionally guaranteed rights of women to terminate their pregnancy. The measures contained therein can put into serious risk the life and health of women.

17. The Macedonian Law on Termination of Pregnancy stipulates that termination of pregnancy cannot be performed before the expiration of three days after the mandatory counselling is conducted, unless it concerns an adolescent woman, a legally incapacitated woman without or with limited working capacity or if there is a valid medical indication, which the doctor must enter into the medical documentation and records.¹⁵ Contradicting the state's reply, as shown in the case studies, there are no exceptions in practice for the waiting period even if the woman has medical indication for abortion. The mandatory waiting period may be doubly harmful, because it postpones the performance of the procedure, forcing women to visit at least twice the medical institution where the abortion shall be performed thus unnecessarily hindering access to abortion for women who have difficulties in accessing the clinic as previously explained in par.3.
18. Just two months after the Law came into effect, two cases have been documented indicating the negative impact of the Law on the life and health of women. The case studies 1 and 2 demonstrate that delaying termination of pregnancy due to the mandatory waiting period requirement set out in the Law exposes women to harassment and inhumane treatment.
19. The implementation of a three-day waiting period in emergency situations might pose a serious risk to a woman's life and constitutes a violation of the right to life of the woman. The restrictive abortion law will lead to illegal and unsafe abortions thus increasing the risk of mortality, which constitutes violation of the right to life (Article 6).
20. In contrast to the response by the government, the World Health Organization (WHO) Safe Abortion Guidelines¹⁶ highlights the importance of avoiding delay in obtaining abortion and recommends that once the decision is made by the woman, abortion should be provided as soon as is possible to do so. The Guidelines further recommend that there should be no mandatory waiting periods and that that the constellation of services available to a woman should always involve, at a minimum, abortion services without delay. This is because the WHO recognises that these barriers contribute to unsafe abortion because they cause delay in access to services, which may result in denial of services due to gestational limits on legal grounds. Further, the WHO states that mandatory waiting periods can have the effect of delaying care, which can jeopardize women's ability to access safe, legal abortion services and demeans women as competent decision-makers.
21. Mandatory waiting periods before an abortion constitute sexual and gender discrimination of women because they bring into question the capacity of women to make reproductive decisions, as well as creating or supporting the negative sexual stereotypes. The World Health Organisation (WHO) has emphasized that mandatory waiting periods are humiliating to women as competent decision makers¹⁷ and that states must ensure protection during the provision of the abortion in such a manner that respects women as decision makers together with eliminating waiting periods.¹⁸
22. Termination of pregnancy is the only medical intervention in the Macedonian health system that requires mandatory waiting period before performing the intervention. Since only women can seek abortion, men can never be subjected to an approval of medical service. This is violation of Article 26 and constitutes sexual and gender discrimination because abortion is a medical treatment that only women need.
23. In conditions where there is already a lack of access to contraception and sexual health education and information, this restrictive law has a direct impact and puts into risk the life of the woman by punishing her to carry a dead foetus until the expiration of the legally prescribed three-day waiting period before an abortion can be performed.
24. It is clear from the terms of the Law and from the government's anti-abortion campaign, that these provisions are intended, not to benefit women's health or to ensure informed consent, but as a form of

punishment for seeking abortion, as was the case with the woman who had to wait five days with a dead foetus, thus putting her life at risk.

iii) Mandatory Counselling (Article 3, 17 and 26)

25. The Law on Termination of Pregnancy stipulates that before termination of the pregnancy, a doctor is obliged to provide counselling to the pregnant woman about the potential advantages of the continuation of the pregnancy, the risks to the health and life of the woman if the pregnancy is terminated, the methods of termination of pregnancy, as well as informing her about the options and methods for preventing pregnancy.¹⁹
26. We have grave concerns that, given the government campaign advocating against abortion, the mandatory counselling regulated in the Rule Book is likely to be biased and intended to dissuade women who have decided to terminate their pregnancy.
27. The consequences from the procedure were stated as the main argument for introducing compulsory counselling in the state's reply to the LOI. However, there is no justification for the overemphasized information on health consequences from abortion. As the WHO points out: "The vast majority of women who have a properly performed induced abortion will not suffer any long-term effects on their general or reproductive health in modern times, the risk of death from a safe, induced abortion is lower than from an injection of penicillin or carrying a pregnancy to term.[...] Negative psychological sequelae occur in a very small number of women and appear to be the continuation of pre-existing conditions, rather than being a result of the experience of induced abortion."²⁰
28. The state in its response to the list of issues is repeating the justification for introducing the mandatory counselling in the new law as women's "right to be informed about possible consequences from abortion". On the other hand, the WHO has stated that with regard to the right to informed consent, patients also have the right not to be informed if they wish to be excluded from receiving medical information.²¹ The International Federation of Gynaecology and Obstetrics has advised that "[n]either society, nor members of the health care team responsible for counselling women, have the right to impose their religious or cultural convictions regarding abortion on those whose attitudes are different" and that "[c]ounselling should include objective information."²² Due to the fact that abortion is a health service needed only by women, any legal provisions that expose women to mandatory counselling constitute sexual discrimination of women. The mandatory abortion counselling also constitutes gender discrimination because it fosters negative stereotypes about the capacity of women to make rational and competent decisions about their pregnancy.
29. The Rule Book for counselling on termination on pregnancy was adopted by the Ministry of Health in October 2014. The document stipulates 4 articles which the gynaecologist needs to follow. The medical provider should inform the client about the possible advantages to the continuation of the pregnancy, as well as underlying the need of informing the women about the possible risks from the abortion procedure: "During the course of the counselling, the pregnant woman should be provided with detailed oral and printed information about the immediate and long-term impact to her health, the psychological effects after the intervention is performed". Further on, most of the rules are related to the foetus, "presenting printed materials and showing a dynamic ultrasound image of the foetus [...] as well as allow her to hear the heartbeat of the foetus", "the effects of the intervention on the foetus" and "as well as (inform) about all anatomical and physiological features of the foetus at the given gestation age"²³. Contrary to the state's response that the "compulsory counselling for women is in order that they may protect their health", there is no evidence that this information has any health outcomes, especially the part in which the women are mandatorily and repeatedly informed that the abortion is terminating the foetus.

30. Patient's consent should be given freely and voluntarily, without threats or inducements, after the patient has been counselled on available risks, potential side effects, and different methods, in a manner that is understandable to the patient.²⁴ Among other guidelines that contribute to biased counselling, there is one in the Rule Book by which the client should be informed: "about the option to withdraw her consent for terminating the pregnancy without any consequences to her future medical treatment and without any loss of rights related to health insurance"²⁵. In Macedonia, the abortion services are not covered by the health insurance and women need to pay a fee for the procedure. Also, there isn't any national legislative or by-law that is making a connection between the abortion services and the right to health insurance or suggesting abortion to be conditional upon the acceptance of another medical service, so there is no logical explanation about the purpose of this article. This double-bind guide could be seen as way to create additional confusion and to intimidate women undergoing abortion that they might lose their health insurance, which especially could affect those who are socially marginalized or have low access to information on their rights.
31. After having a consultation meeting with NGOs, gynaecologists, WHO and the Public Health Institute, HERA send a letter to the Minister of Health requesting the revision of The Rule Book for counselling on termination on pregnancy. The main arguments were related to the conclusion that the Rule Book is not in line with the minimum standards of the World Health Organization (WHO), Safe Abortion: Technical and Policy Guidance for Health Systems. Furthermore, the WHO Guidance is clear that that the counselling shouldn't be mandatory and should be provided promptly without undue delay. The MoH Rule Book is not following the minimum standards for information on abortion procedures and fails to fulfil its purpose, which is to provide information and guidelines on performing safe abortion and use of contraception that will prevent terminations of pregnancy in the future.
32. All this is in conflict with Articles 3 and 26 of the ICCPR which stipulate that there should be a ban on discrimination, as well as Article 17 of the ICCPR which prescribes the right to respecting privacy and family.
- iv) Mandatory filing of a written request (Article 3, 17 and 26)**
33. Termination of pregnancy is the only medical intervention for which the cost is not covered by the Health Insurance Fund, but must be paid by the pregnant woman, and for which a written request must be filed and permission received for the medical procedure²⁶. No medical procedure required by men is subject to such restrictions, which speaks to the fact that women are discriminated unlike men on the basis of their gender and which creates a potential for interference by the state in the right of choice and in the free decision making by the woman. This is in violation of Article 3 of the ICCPR which stipulates an obligation for the State Parties to ensure the equal right of men and women, which is also established with the General Comment to the Covenant no. 28, Article 20.
34. This constitutes a violation and is in conflict with Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which stipulates that no-one shall be subjected to arbitrary or unlawful interference with his/her privacy.
35. The Human Rights Committee has pointed out that in cases when abortion procedures can be legally performed, all obstacles for their provision should be removed.²⁷

v) Legal challenges to the new law

36. The changes to the abortion legislation were adopted in an accelerated procedure, without consulting experts and without any public debate²⁸. This use of the accelerated procedure was unwarranted: in accordance with the Rules of Procedure of the Parliament of the Republic of Macedonia²⁹, laws and changes to the law can be adopted through an accelerated procedure due to the expiration of a certain law or specific provisions, or when it does not entail complex or comprehensive harmonization with EU legislation, or provided the law in question is not complex or comprehensive. The question in this case is both complex and comprehensive. The law has health and social impacts for all Macedonian women of reproductive age, and ethical implications for the medical profession.
37. The new law does not address any identified health need. The new provisions do not benefit women's health in any way. In drafting the provisions, the government ignored the recommendations of international bodies, such as UNFPA and the WHO and the Association of Gynaecologists and Obstetricians in Macedonia. In 2009, the Ministry of Health of the Republic of Macedonia and the State Health Care Institute (Public Health Institute) with the support of the UNFPA prepared a strategic assessment of the policies, quality and access to contraception and abortion in the Republic of Macedonia³⁰. The recommendations in this document concern the improvement of the protocols for safe abortion recommended by the WHO³¹. In 2013, the Association of Gynaecologists and Obstetricians in Macedonia submitted to the Ministry of Health its recommendations for improving the medical protocols. These strategic documents and the recommended measures, as well as those stated in the Report of the Republic of Macedonia were not taken into account when developing the text of the Law on Termination of Pregnancy in 2013. Furthermore, the three measures from the law which restrict the right of women to abortion are not mentioned in any national strategies and policies.
38. A request or a judicial review of the constitutionality of the new abortion law by reference to Article 41 Paragraph 1 of the Constitution of RM, which entails the right of women to freely decide on the matter of conceiving children, was filed by NGOs before the Constitutional Court of the Republic of Macedonia. The Court rejected the appeal³², and did so in terms that demonstrated a clear anti-abortion bias. The Court declared that is not responsible for identifying the level of synchronisation of the national legislation with the international treaties and conventions (ICCPR, CEDAW, ECHR and CRC). The Court held by a majority that the disputed articles do not restrict women's rights, but that their purpose is to "increase the responsibility of the health providers, to increase the efficiency of the administrative procedures, to provide services based on sound evidence-based medical protocols"³³. The decision was reached after a discussion during which the Constitutional judges revealed a shared view that abortion is "murder"³⁴; a debate ahead of the decision highlighted moral considerations about abortion and infidelity. Some of the judges also criticised "liberal values", and the "threat" posed by same-sex marriages to the national existence. For example, one of the judges stated: "I am against abortion. For me abortion is not the exclusive right of the mother. We should protect the unborn children, whose life starts from conception. Worldwide every 30 seconds there is one forced pregnancy termination. If this trend continues it will destroy mankind"³⁵.
39. The explication in the written decision of the Constitutional Court does not differ too much from the biased and moralizing debate concerning the disputed provisions. Namely, the Court has formally confirmed that women do not have the right to equal protection in comparison to all other citizens. The Court, without basing its opinion on medical expertise, as well as without referring to the previous law and to practices in other states, has accepted the provision stipulated by the legislator which states that "pregnancy after the tenth week is considered a late pregnancy, thus the health risks for the woman would be much higher if free termination of the pregnancy is permitted". With regards to the ban on termination of pregnancy prior to the expiration of a period of one year from the previous pregnancy termination, the Court has stated that "the legislator has established an optimal period, **based on medical findings**, that after the end of this period the

woman can terminate her pregnancy without any major risks for her health.” The explication in this part fails to provide the legal argumentation of the Court for the degree of accordance of the said provisions with the Constitution and the Conventions. Instead, it contains arbitrary statements about the medical justification of the restrictions which did not exist in the previous law and which are aimed at restricting the rights of women.

40. The Court supported the provision which gives credence to the stereotype that the woman has no capacity to make her own decisions, thus there is a need to re-examine her decision by imposing on her a legal obligation to submit a written request stating in unequivocal terms her will to terminate the pregnancy. The submission of the written request also entails initiation of a procedure, against which court protection can be requested before the Administrative Court of the Republic of Macedonia. Based on the experience from Case Study 3, a lawsuit was filed on 22.10.2014 for which no answer has been received to this day. However, according to the Constitutional Court the imposition of an obligation to submit a request and initiate procedure does not result in administrative burdening and delaying of the procedure for termination of pregnancy.
41. Furthermore, the Court has considered that pregnant women who are minors or legally incapacitated are deemed unfit to form and express a common sense personal opinion. With regards to the fact of whether they want or don't want to terminate their pregnancy, they are deemed incapable of understanding the necessity or not for termination of their pregnancy. Furthermore, if they decide to take that step they are incapable of understanding the possible consequences for their personal health. For all those issues, according to the Court, “the legal and moral accountability rests on their parents and guardians”. The Court does not take into account the fact that a girl over the age of 15 can freely engage in a consenting sexual intercourse, yet for the termination of her pregnancy she must get the consent of a parent due to the fact that she is incapable of forming a common sense personal opinion. This explication is unique in the sense that it supports negative stereotypes about women as less capable of making decisions. The conclusion is that the Constitutional Court has adopted a decision which is legally unfounded, arbitrary and supportive of the current policy of rolling back women's rights.
42. It is worth mentioning that judge Natasha GaberDamjanovska, expressed a dissenting opinion, stressing that “This law places administrative obligations on pregnant women and restricts their right to decide for themselves. It is discriminatory to force a woman to ask for permission for something that is really intimate and sensitive and concerns her physical integrity. There is no such process for any other medical intervention. Should a rape victim really have to ask for a confirmation document from a public prosecutor? Should a woman carrying a dead foetus be forced to wait 3 days for written permission?”³⁶

vi) Administrative challenges of the implementation of the new law (Article 3, 17 and 26)

43. The by-laws and guidelines for implementation of the Law on Termination of Pregnancy are not fully implemented in practice. There are two new cases of pregnancy after the 10th week (case studies 3 and 4) with consequences to the health of women because of not complying with the law.
44. In both cases, serious administrative flaws were recorded that exposed women's health and life to danger. While the state contends that Article 13³⁷ of the Law on Termination of Pregnancy can be used in emergency cases, in fact the case studies are showing that this article was completely overlooked and not implemented. Maybe the reason for this lies in the obligation of medical providers to report in such cases as described in the same Article³⁸. Another reason derives from the consequences for medical providers. Namely, the 2013 Abortion Law is stipulating for cases of non-compliance a misdemeanour provision (fines up to 50 000 €) and penal provisions (up to 3 years in prison).

IV. GOVERNMENT CAMPAIGN AND THE NEW LAW ON TERMINATION OF PREGNANCY

The Campaign

45. In Paragraph 9 of the previous Concluding Observations of the Human Rights Committee in relation to the Second Periodical Report (2008) of the Republic of Macedonia on the International Covenant on Civil and Political Rights, stated: *The State party should continue to promote the participation and representation of women in the governmental and private sector and implement positive measures in accordance with Article 6 of the Law on Equal Opportunities for Men and Women to this end. It should further undertake educational campaigns to change the perception of women in stereotypical roles in the State party's society.*
46. However, since 2008, the position of women has deteriorated due to measures taken by the government that restrict women's rights, advocate for, rather than challenge stereotypical roles, and promote stigmatising and discriminatory perceptions of women who have abortions. Namely, the Government of the Republic of Macedonia published in 2009 a call for tenders for a campaign which aimed to inform the public about the purported consequences of abortion, and to “emphasise the message that creating a new life – your own child - is a blessing from God”. This was accompanied by a number of articles by representatives of the Orthodox Church in the media where women who have had an abortion were labelled murderers. In addition, unaccredited posters were placed all over the capital featuring artificially created images of fetuses with the accompanying slogan *Abortion is a murder*. Forty-one NGOs signed a declaration stating that “Abortion is a right of choice and a right of every woman” and demanding the withdrawal of this government campaign, an end to discrimination against women who have had an abortion, as well as improved access to contraception and evidence based information related to sexual and reproductive health.
47. Following the NGO initiative, the President of the Government of RM Nikola Gruevski issued the following statement: “I would like to state that never before, neither now nor in the future, has the Government contemplated, contemplates or shall contemplate a ban on abortion”³⁹. Yet, a media campaign entitled “Choose life, you have the right of choice” was launched and intensively broadcast in the media from 2010 till the present day. It involved the representation of women in a stereotypical manner, reducing women solely to their reproductive function. Furthermore, it denounced all women who had either had an abortion or might contemplate terminating a pregnancy. Notably, the major messages of the campaign treated abortion as murder, stating⁴⁰: “Congratulations! You’ve just killed a healthy baby that could have grown into a beautiful boy or a girl!”
48. The research of two NGOs—ESE and HERA—has revealed that despite the silence of the public administration over the expenditures related to this campaign and based on public documents which are only available for 2009, the Government has spent annually 0.6 million Euro on this campaign. In comparison, the Ministry of Health annually spends only 0.15 million Euro — one quarter of what was spent on the campaign- on activities for the health protection of mothers and children within the *Annual National Program for active health protection of mothers and children*.
49. Within the Concluding observations on the combined seventh and eighth Periodic reports of Hungary (11 February – 1 March 2013), the Committee on the Elimination of Discrimination against Women⁴¹ has called on the state to cease all negative interference with women's sexual and reproductive rights, including by ending campaigns that stigmatize abortion and seek to negatively influence the public view on abortion and contraception and to ensure access to safe abortion without subjecting women to mandatory counselling and a medically unnecessary waiting period as recommended by the World Health Organization.

V. RECOMMENDATIONS

50. In light of this information, we respectfully invite the Human Rights Committee to consider the following recommendations in its Concluding Observations :

1. Urge the State to immediately bring its Law on Termination of Pregnancy and its by-law into compliance with the Covenant by repealing the restrictive provisions of the 2013 Law. Urge the State to engage in a consultative process with Associations of professionals, NGOs and the World Health Organisation with a view to the adoption of a non-discriminatory, rights-based abortion law and law that will safeguard women's health and life.
2. Take measures for increasing the access to modern forms of contraception by including at least one contraceptive in the list of medicines covered by the Health Fund, to take other promotional and education activities in order to reduce abortion and to comply with the National Strategy on Sexual and Reproductive Health 2010-2020.
3. Please reaffirm and widen the concluding recommendation from (CCPR/C/SR.2573) for undertaking education campaigns to change the perception of women in stereotypical roles in the Macedonian society, as well as by suggesting campaigns that will empower women and engage men to become supportive partners in establishing gender justice.

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