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The 2013 Law on Termination of Pregnancy: A Clear Case of the Suspension of Democracy in Macedonia

Introduction

This paper contains my initial findings and reflections on the process which led to the promulgation of a new law on termination of pregnancy (shortened: abortion law) in the Republic of Macedonia in 2013. In developing this case study and analysing official documents and media items, I followed one of Charles Tilly's (2007:60) principles for describing democracy, democratisation and de-democratisation: 'Concentrate on observations of interactions between citizens and states...observe what happens when groups of citizens make claims on state officials and when state officials seek to repress their enemies or rivals'. I argue that this instance of law-making is exemplary for the disturbing factual suspension of the already fragile nascent democracy in Macedonia.

I write the paper in a context of a great political turmoil and crisis, regular mass street protests all over the country, and a continuous power abuse by the ruling parties, VMRO–DPMNE in particular, the police and the judiciary. These occurrences make it very difficult to distance oneself from the daily reality, the ongoing state violence and detrimental politics, especially since the very same political party was that which had paved the way for and eventually carried out such a profound intrusion in the body of women's human rights and the bodies of women.

Preceding developments

Up to June 2013, the Republic of Macedonia had a rather liberal abortion law, which stemmed from the country's socialist past. After Macedonia's independence from the Socialist

Federal Republic of Yugoslavia in 1991, the clergy and conservative (nationalist) politicians and intellectuals occasionally called for restricting or criminalising the abortion, but there were no larger anti-choice campaigns. This started to change in the period 2008–2009. A substantial amount of unsigned posters, featuring graphic images and stating that abortion was murder, was hanged on prominent locations. No non-governmental organisation (NGO) or state institution claimed responsibility for this action, whereas the Government denied any attempts to hamper the access to abortion. Its officials spoke of considering legislative changes only for the purpose of modernising the existing law, which dated from 1976.

At the same time, the Government – which mainly consisted of members of the nationalist Christian democratic party VMRO–DPMNE – increased the price of abortion in the state-owned gynaecological clinics, conducted a campaign for giving birth to a third child and introduced financial benefits for those who would do so. Moreover, it announced a contract award procedure for the production of videos on the consequences of abortion. It was obvious that the videos were meant to be all but impartial, not in the least because their description contained Christian terms and false information. They were to praise motherhood and promote giving birth. It was further implied that the women who had chosen abortion had perpetrated a murder (Acevska, 2009; *Dnevnik*, 2009; HERA, 2009; Služben vesnik, 18/1976; *Vest*, 2009).

Opposition parties, human rights and women's NGOs, as well as progressive intellectuals, journalists and medical professionals, spoke against these misleading efforts and the lack of transparency regarding the rumoured forthcoming of a restrictive law on termination of pregnancy. The opponents also objected the government-sanctioned intrusion of the Macedonian Orthodox Church in the constitutionally guaranteed secularism and freedom of choice regarding childbirth, and underlined the detrimental consequences – for women, in particular – of the stigmatisation and criminalisation of abortion. Without promoting abortion as a method of birth control, they called for protection of women's sexual and reproductive rights, safe, legal and affordable abortion, a broad access to quality contraceptives, and comprehensive education on their use (Helsinški, 2010; Jovanovska, 2009; Koalicija, 2009; Kolozova, 2008; Lj. B., 2009; Sapunov et al., 2009).

All these appeals fell on deaf ears. In 2010 and 2011, several anti-choice videos and advertisements appeared in the media as part of the government campaign titled 'Choose life. You have the right to a choice. A campaign to explain the consequences of abortion'. Already the title made it clear that the campaign was not intended to neutrally present the pros and cons of giving birth and having abortion. Using deceptive data and a highly fearmongering and moralistic discourse, the campaign did not promote the making of a well-considered choice, but aimed at imposing a specific choice – giving birth – and stigmatising those who would choose or had chosen otherwise. This time, too, a fervent debate followed wherein the pro-choice opponents asked the

Government anew whether it was preparing the ground for a restrictive abortion law. The latter denied it again and explained that the only goal of the campaign was to educate the public on the harmful consequences of abortion (HERA & ZGOM, 2011; Jovanovska, 2011; Pandevska, 2011; Popovska, 2011; Stojanovski, 2011).

A controversial procedure, a controversial law

With the exception of the Prime Minister's (and leader of VMRO–DPMNE) ironic dismissal of the struggle for women's rights, the year 2012 did not bring new abortion-related developments. This proved to be the calm before the storm. On Easter 2013, a high official of the Macedonian Orthodox Church said that if the Macedonian nation and Church were to be preserved, women always had to opt for giving birth. Just a couple of weeks later, the Government – represented by the Ministry of Health – submitted to the Parliament a draft law on termination of pregnancy which was due to be passed in a shortened procedure. Echoing the rationale given in 2009, the legislator spoke of the need to modernise the law from 1976 by adjusting it to the current healthcare system and curative methods and principles. The request for a shortened procedure was justified by stating that the law in question was not complex and extensive. Whereas such a justification was in line with the Rules of Procedure of the Macedonian Parliament, the contents of the draft law revealed that the request and its justification were an undemocratic smoke screen, which served to mask the substantial changes and prevent larger debates and protests, i.e. curtail criticism (Duvnjak, 2016; *MKD*, 2013; Rizvanović, 2012; Vlada, 2013a).

Without criminalising abortion, the draft law subtly, albeit drastically, restricted the access to it by bureaucratising, complicating and prolonging the procedure and introducing large fines and imprisonment for the dissenting medical professionals. For example, different from the stipulations of the 1976 law, the woman seeking abortion¹ was supposed to submit a written request for the procedure (including the outcome of an ultrasound examination), go to a compulsory counselling on contraception, the benefits of giving birth and the risks of abortion, and only after a successive mandatory waiting period of three days be allowed to undergo the intervention (Gaber-Damjanovska, 2016; Vlada, 2013a).

Although the legislator portrayed the draft law as not complex and extensive, it was exactly the opposite. The law was complex both because of the complexity of the issue it dealt with – or, in fact, failed to deal with – and the many contained ambiguities and inconsistencies. Furthermore, it

¹ There were exceptions in case of rape-related pregnancies, health-related concerns, minors, and women with a limited or no capacity to exercise rights.

was bound to have extensive consequences on the women dealing with an unwanted pregnancy and increase the number of unsafe illegal abortions, given its restrictive character and the context in which it was to be applied: a largely conservative and impoverished country without comprehensive sexual education and affordable contraceptives, and with an understaffed, overburdened and not always easily accessible public healthcare system (Association, 2016; HERA et al., 2016).

So, whereas the Government has never announced – and had even denied in the past – that it was working on a new abortion law, all of a sudden it submitted one to the Parliament and rushed the procedure. NGOs, opposition parties, medical professionals, and public figures expressed their outrage. Members of the European Parliament and international NGOs sent letters of concern to the Macedonian authorities. Public protests in front of the Parliament were organised, too. The prochoice opponents demanded that the draft law be withdrawn from the parliamentary procedure and subjected to a broad consultative process. They criticised the Government's lack of transparency, blatant interference with the freedom of choice regarding childbirth, and disregard for the international documents which Macedonia had ratified, such as the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention for the Protection of Human Rights and Fundamental Freedoms.

The mandatory waiting period, which undermined women's agency and made the intervention riskier, was seen as particularly problematic. Another huge cause for concern was the introduction of a compulsory counselling. The draft law did not specify which current curative standards were to be followed and the objectors doubted their supposed modern and evidence-based character. An important reason for this distrust was the law's noncompliance with the World Health Organization (2012) guidelines on safe abortion which clearly discouraged any delays and other hinders in the provision of this medical service. The anti-abortion and religious discourse of the government campaigns did not leave much space for optimism either (HERA et al., 2016; M.V., 2013; Najčevska, 2013; Rizvanović, 2013; Simonović, 2013; Vankovska, 2013).

The public hearing, which was organised by the Parliamentary Committee on Health, proved to be not more than a pro forma event. Just like his (female) fellow party members from the ruling VMRO–DPMNE, the Minister of Health showed no intention of listening to the objections and backing down. He repeatedly denied that the law was restrictive in any way and defended the introduction of a mandatory counselling with the right of women to be informed. All the while he propagated false information, such as those that the proposed law was almost identical to the previous one and even more liberal than the Dutch one. Misusing the fact that some of the oppositional NGOs also worked on LGBT rights, he resorted to a discriminatory and a homo-, bi-, and transphobic discourse to delegitimise the whole NGO opposition and said that it was not to be

expected that he would agree with such organisations whose views he did not share nor respect (*Alon*, 2013; Helsinški, 2013, 2014; Komisija za zdravstvo, 2013; Jovanovska-Veljanovska, 2013).

The Parliament passed the law on 10 June 2013, only 20 days after it had received the first draft. Few changes were made, but the law remained restricting and complicating the access to abortion. In the final discussion, the proponents of the law maintained that the law was liberal and did not infringe upon any women's right. At the same time, they did not fail to mention the benefits of giving birth and the dangers of undergoing an abortion. That an overwhelming majority of the parliamentary opposition was absent and did not vote – in protest against the contents of the draft law, the procedure, and the tone of the preceding debates – did not seem to disturb the other parliamentarians. The latter did not apparently mind either that they passed a defective law with many loopholes and contradictions (Marušić, 2013; Mladenovska, 2013; Sobranie, 2013; Vlada, 2013b).

A continuous disregard for the opposing views

Once the Parliament passed the law, it was sent to the President for a final approval. Various NGOs and citizens wrote to him asking him to exercise his right not to sign the decree and return the law to the Parliament for an additional discussion. HERA, one of these NGOs and main forces behind the pro-choice mobilisation, was invited to the President's Cabinet to elaborate its concerns. This invitation, too, turned to be a pro forma act. Not only did the President sign the decree on the law, but when HERA criticised his move, his Cabinet responded that the new law contained the same provisions as the preceding one and did not in any way hinder women's freedom of choice regarding the termination of pregnancy. This formulation echoed those of the VMRO–DPMNE's parliamentarians and government officials and showed that even the Head of the State, who had won the presidential elections as that party's candidate, chose to spread untrue information, fully ignore the opposing views, and thereby contribute to the deterioration of the position of women in the country (HERA, 2013a, 2013b; Miškovska Kajevska, 2013; *PlusInfo*, 2013; Služben vesnik, 87/2013).

In September 2013, using the only remaining democratic procedure to alter the law which had already become effective, a legal scholar and four NGOs filed an initiative with the Constitutional Court for a commencement of a procedure for reviewing the law's constitutionality. In the 18 pages long document, the signatories pointed, *inter alia*, that the requirement to submit a written request, and the mandatory counselling and waiting period were incompatible with the constitutionally guaranteed freedom of choice regarding childbirth. In addition, given that those

provisions did not exist for any other medical intervention, they represented a discrimination against women. The provisions decreased women's control over their own bodies and increased that of the state.² The law's internal contradictions and collisions with the international treaties which Macedonia was supposed to respect were also attended to. Unfortunately, this initiative did not bear fruit either. At the Constitutional Court's sitting on 8 October 2014, all but one of the judges stated not to consider the law problematic and fully rejected the initiative. The dissenting judge, in her separate opinion, objected the Court's choice not to review the constitutionality of any of the disputed stipulations and stated that the signatories had rightfully submitted such an initiative (Gaber-Damjanovska, 2016; Ristova-Aasterud et al., 2013).

It is striking that it took the Constitutional Court one year to decide upon the initiative, especially since it rejected it almost unanimously. On 10 October 2014, two days after the Court's decision, the bylaw on the mandatory pre-abortion counselling was published in the Official Gazette of the Republic of Macedonia, even though the Minister of Health was obliged to prepare it by 24 June 2014 (i.e. within a year after the law's entering into force). As the pro-choice opponents had correctly feared, the counselling, whose contents had not been previously revealed, was not intended to help women make a well-considered choice, but to discourage them from having an abortion. Contrary to the previous repetitive statements of the Minister of Health and his fellow party members, the required ultrasound examination was not only a precautionary measure ensuring that the termination of pregnancy would not be additionally risky. The bylaw stated that the doctor had to show the woman a dynamic ultrasound image of the embryo/foetus, describe it to her and turn the sound on so that she could hear its heartbeat. Moreover, the doctor was supposed to inform the woman about the potential benefits of maintaining the pregnancy and all short-term and longterm (psychological) health consequences of the intervention, as well as tell her that she could withdraw her abortion request without any negative effects on her health insurance and medical treatments in the future. There were no stipulations on the provision of information on the consequences of giving birth to an unwanted child (Služben vesnik, 148/2014).

The bylaw proved once more how deceitful were VMRO-DPMNE's (contradictory) claims that the new abortion regulations did not differ from the old ones or that the former differed only to the extent that they meant modernisation of the latter.³ Even prior to the publishing of the bylaw, soon after the abortion law became effective, the new government-commissioned videos showed

bringing new quality and higher standards to the country (Vlada, 2014), and the purchase of dated and lower quality

² Roza Tsagarousianou (1995) speaks of a clear link between the reduction of the access to abortion and the treatment of women as state property. ³ This was not the only instance when the Government used the discourse of improvement to mask the (intended) introduction of a discriminatory, or otherwise harmful, policy. For example, the proposed set of constitutional changes, which included a constitutional definition of marriage as a union solely between a man and a woman, was presented as

that VMRO–DPMNE planned to go much further in instilling its profound anti-choice orientation. Particularly problematic was the video in which a smiling medical professional congratulated a man on a successful abortion and told him that he and his partner 'killed a healthy baby which could have become a wonderful boy or a girl' (Kampanji, 2015. See also: Cvetkovska, 2013).

In reaction to the complaint of the parliamentarians of the largest opposition party SDSM, the Broadcasting Council established that the video in question breached some of the stipulations of the Law on Broadcasting Activity (e.g., prohibition of misleading information and endangerment of human dignity). Nevertheless, the Government was allowed to broadcast that video between 00:00 and 05:00. During the rest of the day, only a corrected version of the video was permitted: one which would not suggest that abortion, which had been performed in a medical institution, was murder. The Government responded with a press release in which it portrayed itself as the wronged party and referred to this – very mild, in fact – ruling as censorship, which had been imposed by the oppositional SDSM and the NGOs funded by the U.S. billionaire George Soros. Subsequently, the video was altered in a mocking manner: the word 'killed' was bleeped, a superimposed text was inserted stating that the Broadcasting Council had censored the contents, and an anti-choice statement was added at the end. Two versions ended with pronouncements of Mother Teresa, and one version featured an utterance of Ronald Reagan.

The statements did not explicitly mention the words 'kill' and 'murder', but implied them, nonetheless, and suggested that people opted for abortion because of egoism. It is particularly telling that utterances of Mother Teresa were chosen, given her typically positive reception in Macedonia and the fact that she had been born in the country's capital Skopje. HERA criticised this bogus alteration and asked the Broadcasting Council to ban the video, but the Council remained silent. Few months later, HERA and five other NGOs filed a complaint with the Commission for Protection Against Discrimination regarding the contents of the 'censored' videos, but the Commission did not find the videos in any way disturbing or discriminatory (*Falanga*, 2013; Komisija za zaštita, 2014; *Radio MOF*, 2013; Sovet, 2013).

De-democratisation disguised as democracy

The revealing in February 2015 of the massive state-organised wiretapping of, *inter alia*, foreign diplomats, (opposition) politicians, journalists and NGO activists, disclosed the large extent

⁴ VMRO–DPMNE repeatedly tries to delegitimise the oppositional NGOs by portraying them as Soros-funded traitors and spies, i.e. state enemies. Paul Stubbs (2013) notes the same behaviour of the authorities in Croatia and Serbia in the 1990s vis-à-vis the critical NGOs in the respective state.

of the power abuse of the ruling parties, VMRO–DPMNE in particular: mass forgery and sabotage of the electoral process, including the electoral register, use of physical violence against opponents, blackmail, extortion, corruption, and extensive control of the media, judiciary and state institutions (Senior Experts' Group, 2015). Using Tilly's (2007:20) categorisation of regimes' public politics, Macedonia can be described, thus, as a 'high-capacity undemocratic' state, with '[1]ittle public voice except as elicited by the state [and] extensive involvement of state security forces in any public politics' (2007:20), which 'permits rulers to block or undermine democratisation' (2007:184). Put differently, Macedonia is a state with a high capacity for non-democracy.

Therefore, the restriction of the freedom of choice regarding childbirth is emblematic of the much broader restriction of the freedom of choice, i.e. the human rights and liberties, which the VMRO–DPMNE-led government has undertaken in the past years. In other words, its anti-choice orientation does not only concern abortion, but also all segments of democratic engagement within the state. As Sylvia Walby (2015:112) observes, '[d]emocracy involves political contestation...[between] political actors ranging from those in civil society projects to those involved in designing and executing governmental programmes'. Consequently, and applied to the case of Macedonia, when the Government actively discourages political contestation by e.g., threatening the citizens that they will lose their jobs if they join the oppositional protests or if they do not join the counter-protests of the ruling parties, there is suspension of democracy.

In his analysis of the origins of the (post-)Yugoslav wars, Chip Gagnon (2004) attends to the demobilisation of people as heterogeneous citizens of Yugoslavia and their parallel mobilisation as homogenous members of ethnic collectives which the ruling elites carried out in order to remain in power. In a similar manner, in Macedonia one can speak of a Government-run forced demobilisation of people as heterogeneous political agents and their forced mobilisation as homogenous supporters of the parties in power. The parallel extends, too, to the acts of delegitimisation of opponents because of their suggested foreign-funded allegiance to an inimical agenda: 'Anyone who questioned [the ruling parties]...was demonized as being in league with the enemy' (Gagnon, 2004:179).

It is not, thus, an exaggeration to consider that a 'state of exception' exists in Macedonia, i.e. a 'diminution of democracy during declared crises...[and] suspension of the juridical order by political decree' (Walby, 2015:117). Although the Government has never declared such an emergency, it acts as if it has done that. The undeclared state of exception includes a 'bypassing [of] the usual procedures' (Walby, 2015:117), which is in Macedonia most visible in the area of legislation. According to the data for 2015,⁵ 57% of the new laws were passed in a shortened

8

⁵ No such analysis exists for 2013.

procedure (as it had been the case with the abortion law), whereby less time is allocated for the parliamentary debate and the collection of input from the public. The latter has been additionally hindered by the fact that the public was able to access the draft versions of only 6% of those laws. The rest was not published in the online Unique National Electronic Register of Regulations of the Republic of Macedonia, even though it was mandatory to do so (Makedonski centar, 2016).

In hindsight, the easiness, speed, and arrogance with which the access to abortion was restricted and the anti-choice discourse was installed in Macedonia are not surprising. Nonetheless, they should be seen as an important warning of the danger which the undemocratic developments pose to (women's) human rights and liberties, especially when these developments occur in supposedly democratic institutions and during presumably democratic procedures. Finally, this experience also calls for a more extensive and alert citizen participation in the decision- and law-making processes, including whistleblowing regarding law infringements, de facto disenfranchisement, and undemocratic mobilisation.

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