

ANALYSIS OF THE COMMENTS AND RECOMMENDATIONS IN THE 2020 EUROPEAN COMMISSION REPORT ON NORTH MACEDONIA

**SEXUAL AND REPRODUCTIVE HEALTH AND
ROMA SOCIAL INCLUSION**



A Member Association of
 **IPPF** International
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CHAPTER 23

JURIDICARY AND FUNDAMENTAL RIGHTS

A

LAW ON TERMINATION OF PREGNANCY AND SEXUAL AND REPRODUCTIVE HEALTH

The EU progress report for North Macedonia highlights the importance of effective implementation of the law on termination of pregnancy through improved “access to medical procedures, contraception and information on sexual and reproductive health throughout the country”.

Although in 2020 the Ministry of Health budgeted the pilot program for medical abortion as alternative method to surgical to take place at the University Clinic for Gynecology and Obstetrics, hence the project has not started yet. The medical drugs are being procured, but since the medical guidance for safe abortion are not updated to respond to the new law requirements, the implementation of medical abortion was postponed. The national working group has drafted the new clinical guidance for safe abortion but still not officially approved by the minister of health. The Ministry of Health **must act faster and adopt the medical guidance** to support implementation of medical abortion and improve the quality of safe abortion since the current protocol is outdated and not in accordance to WHO standards.

Although the contraceptives are procuring through the Preventive programme for mother and child in the past two years, the distribution is centralized and only women who are visiting University Clinic in Skopje can receive free contraception. Other state hospitals and family gynecologists are not part of the free contraceptive national mechanism. The Ministry of health needs to **develop logistic model for distribution of contraceptives** throughout the country and ensure all hospitals and interested family gynecologists can access free contraceptives for their clients, especially for those who are vulnerable and socially-excluded.

In November 2019 the Government has approved the information for piloting comprehensive sexuality education in four elementary schools as a model to improve access to information for sexual and reproductive health in the educational system. Although the pilot program

was delayed in the first 9 months, with the nomination of the new minister of education it has officially started in October 2020. There is serious risk that due to closure of schools in a time of COVID pandemic, the implementation of the pilot program could be endangered. Ministry of Education together with the Bureau for Educational Development will need to ensure that despite the pandemic, there will be a contingency plan how **to ensure proper implementation.**

There is **neither improvement nor regression** about the current implementation of the sexual and reproductive health and rights. Since the adoption of the new abortion legislation, **little progress** has been done by the Government to improve access to safe abortion, contraception services and access to sexuality education information. Although there is still a high political will for advancing sexual and reproductive health in the country, the **dynamics of law and policy implementation lacks behind.**

The **COVID** pandemic has definitely influenced the slow dynamic of implementation of the abortion law and sexuality education pilot project. Moreover, access to abortion and contraception must be acknowledged by the state as **essential health services** during humanitarian crisis and as a core gender equality issue, and therefore prioritized in improving national public health policies.

B

HIV

The EU progress report for North Macedonia confirms lack of national policies to effectively combat HIV and that "*the government still needs to adopt a new multiannual strategy to combat HIV*".

In 2018 in North Macedonia the Government made significant progress and fulfilled its commitment to ensure financial sustainability of essential services for **HIV** prevention, testing, care and support for HIV, after international funding and donor withdrawal from the country. As a follow up, since 2018 approximately 750 000 EUR are allocated through the Ministry of Health to CSOs to deliver HIV preventive services for key populations (gay men and other men having sex with men, sex workers, people that inject drugs), people living with HIV and vulnerable youth. Although HIV prevention and treatment activities are each year part of the National program for protection of the population from HIV, yet, the Government has not adopted the **Draft National HIV Strategy 2018-2022** that has been developed by a multi-sectorial group in 2017, which determine sustainability of all HIV programs in a long-term scale.

Additionally, the **Action plan of the Strategy for development and cooperation of the Government with CSOs 2019-2020**, acknowledges "Establishment of functional and long term mechanism for activities of the Program for protection of population from HIV that are implemented by CSOs", including "revision of bylaws acts for establishment of functional

and long-term funding mechanism by the Ministry of Health” for social contracting. Although the National Working group established by the Ministry of Health and CSOs has developed several models for revision of the current Law on Health Protection to legally recognize CSOs as service providers of health services **yet no progress has been made in 2020** to change the legislation, as perquisite for long term financial sustainability of health services for marginalized communities delivered by CSOs.

The Parliament **has to make legal changes in the Law on Health Protection**, in order to recognize CSOs as Public Health Service providers for marginalized and vulnerable groups, so the Ministry of Health **can develop HIV prevention standards** to ensure effective implementation of high quality of HIV services provided by CSOs.

C

ROMA INCLUSION

The EU progress report highlights that “*Roma inclusion is receiving increased attention from both the national and the local authorities, though much still needs to be done. Implementation of the Roma inclusion policies is slow and lacking sufficient capacity for implementation, coordination and monitoring. The government has increased funding for Roma integration policies but poor absorption of funds remains a problem.*”

The Commission report is concerned about **slow implementation of the Roma inclusion** policies. However, there is no reference regarding the lack of responsible institution and leadership for monitoring Roma inclusion policies at all levels. Specifically, after the parliamentary elections, the **Minister without a portfolio** who was previously responsible for the implementation of the National Strategy for the improvement of the situation of Roma and acted as a National Focal Point for the 2020 Roma Integration project **has been abolished**. The National Roma Strategy is being transferred into the responsibilities of the Ministry of Labor and Social Policy and the Minister appointed as national coordinator. Currently, Roma population, as the most deprived and socially excluded group in the country, has no separate body responsible for creation and implementation of policies and leading inter-sectoral approach towards Roma integration. By the end of the year the **Roma Inclusion Strategy will come to end**, and yet there is **no preparatory work and coordination** between key stakeholders for the **next multiyear planning cycle** for the follow-up strategic framework.

The Government has to conduct **an evaluation of the current Roma Inclusion** strategy and ensure findings are reflected into the new strategic framework that needs to be adopted by the end of 2021. Moreover **establishment of a separate Governmental body** that will be responsible for creation and implementation of **Roma inclusion** policies is seen as very important political decision for the progress in this area.

D

SEXUAL AND REPRODUCTIVE HEALTH OF ROMA WOMEN

The EU progress report highlights that "*The Roma community is particularly vulnerable in the context of the COVID-19 crisis and it is essential to guarantee full access to health services in order to control the spread of the virus... Their access to education, housing, health and employment and justice remains a concern.*"

In particular, Roma women from municipality of Suto Orizari continued to face barriers to access reproductive health services. In January 2020, the only family gynecologist relocated her office to other municipality, leaving between **8,000 and 13,000 women without gynecological health care for entire year**. Additionally, discrimination against Roma to access health care remains a concern. In 2016 S.M and M.B., were denied by the private gynecological facility to be registered as patients based on their Roma ethnicity. Roma women filed a law suit against the private gynecologist, but the court rejected their claims as unfounded. However, on 1 December 2020, the Committee on the Elimination of Discrimination against women (Appendix 1), after an individual complaint was submitted by S.M. and B.M to the Committee, noted that the state failed to ensure practical realization of the principle of non-discrimination as concerns access to gynecological services and to ensure through a competent national tribunal the effective protection of S.B and M.B. against any act of discrimination.

The **illegal fee charging** in primary gynecological facilities remains a concern for many socially-vulnerable groups, particularly for Roma. In 2019 the Roma Women's Initiative from Šuto Orizari recorded 159 cases of women being charged illegal fees in gynaecological facilities.

The Ministry of Health **program for active healthcare** continued to be **ineffective** which especially increases health inequalities among Roma women. In 2020 only 19% of pregnant women received free folic acid and the postnatal visits from patronage nurses in Suto Orizari during COVID-19 pandemic has significantly reduced (40%), compared to 2019 (72%). Although 32% has received telephone health advices, Roma women were complaining that such virtual medical practice was not that effective as visits at home and should not be replaced.

The Government should take **urgent and lasting action for provision** of full access of health services especially for sexual and reproductive health for Roma women. In particular, the Ministry of Health should a) establish **systematic measures to overcome the illegal charging by family gynecologists** that are especially affecting Roma women b) ensure effective program and budget implementation of the Program for active healthcare and c) take appropriate measures to eliminate discrimination in the health system, especially for Roma ethnicity.

E

DOMESTIC AND GENDER BASED VIOLENCE

The EU progress recognizes that "Thirteen new services for victims of gender-based violence were established during the reporting period...six shelters, three in Skopje and three in the Pelagonia, Vardar and East Region, leaving four regions without access to such services." and also highlights that "The shelters still do not meet the minimum standards of the Istanbul Convention and most are not accessible for women with disabilities... The action plan for the Istanbul Convention lacks specific funding for its effective implementation."

The lack of Governmental funding for establishing and running of new services of gender-based violence continues to be the biggest challenge for effective implementation of the action plan for Istanbul Convention. In 2020 only two local governments, city of Skopje (for First Family Center) and city of Strumica (for Shelter center), were providing domestic funding for CSOs specialist services for gender-based violence. Although the Ministry of Labor and Social Policy continued supporting the service provision in Skopje, including the SOS info line, Crises center and Shelter center, hence the governmental funding for service delivery were not available for other regions and local CSOs. All 10 counseling centers for survivors of domestic violence established in 2019 throughout country are run by local centers for social work. Local Women CSOs are not part of the governmental funding nor for running local services for gender-based violence. Moreover, these counseling centers lack trained professionals and the operating hours do not meet the needs of survivors of violence. Filed data also pointed out that some of the government counseling centers were completely closed during the COVID-19 curfews in the country. Istanbul convention is very clear that the **country should ensure specialist women's support services to all survivors of violence and their children.** On the other hand, the national action plan for Istanbul Convention aims to increase the availability of various services for gender-based violence until 2022, including for counseling services, legal support, shelter and crises centers and referral centers for survivors of sexual violence.

Government has to seriously increase its funding commitment in order to ensure effective implementation of specialist services for survivors of gender based-violence, if the country wants to have greater impact to the Objective 3 of the action plan of Istanbul Convention - **Establishment of the services for improvement of the protection of the victims of domestic and gender base violence.** Moreover, both local and central government needs to ensure that the **national funding is also available for women CSOs** to establish and run specialist services for gender-based violence at local level and thus fill up the gap of the four regions that are currently without access to services.

CHAPTER 19

SOCIAL POLICY AND EMPLOYMENT

A

ROMA WOMEN EMPLOYMENT

The EU is concerned that "...the country remains moderately prepared in this area. There was some progress in the reporting period in reducing the unemployment rate and increasing the benefits of social assistance..." "...As the previous year's recommendations were not fully implemented, they remain valid. In the coming year, the country should in particular: continue to implement activation measures for long-term and low-skilled unemployed people, including women, persons with disabilities and Roma..." "...Although the number of Roma benefiting from active employment measures increased, it is still 10 times lower than for non-Roma beneficiaries. The criteria for participating in active employment schemes should be reviewed to ensure increased participation of vulnerable people, including Roma."

Although the Commission welcome the reducing of the unemployment rate in the country, the struggle with utilization of the employment measures among Roma people remains the same as before. Moreover, the Gender gap is significant and from 6,5% of Roma who used the national employment measures in 2019 **only 2,02% were women**. Furthermore, 4,5% of registered unemployed persons are Roma women and in the City of Skopje the percentage goes up to 8%. High number of Roma women are not eligible to use the employment measures, since **95% of the registered women do not hold primary education diploma or have only finished or unfinished primary education**. This raise a serious question are designed employment measures compatible with the specific needs, qualifications and social vulnerability of the Roma women. Synergy between education and employment policies will certainly lead to better qualifications and eligibility of Roma to benefit from the employment measures more efficiently.

The support system to increase employment opportunities, especially on local level is very important. Although the institutionalization of **Roma informative centers within local Centers** for Social Work process has started, the **dynamic is very slow**, leaving the Roma people without any support for more than a year. Roma informers who are being employed have no detailed description of their responsibilities so they can be visible and of support for the local communities.

The Government should closely monitor the implementation of its employment measures, particularly how are they used by the Roma women. Adaptation of the criteria for benefiting of the employment measures or designing new that will be specifically tailored to Roma women should be also taken into consideration in order to increase the employment of Roma women in the country.

APPENDIX 1 CEDAW ACT ROMA WOMEN DISCRIMINATION



Convention on the Elimination of All Forms of Discrimination against Women

Advance unedited version

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication Communication No. **143/2019*******

Communication submitted by:

S.B. and M.B. (represented by counsel,
Natasha Boshkova)

Alleged victims:

The authors

State party:

North Macedonia

Date of communication:

16 May 2019 (initial submission)

References:

Transmitted to the State party on
24 May 2019 (not issued in document
form)

Date of adoption of views:

2 November 2020

Subject matter:

Discrimination against Roma women

Procedural issue:

None

Articles of the Convention:

1, 2 (a), (c) and (e) and 12

Article of the Optional Protocol:

None

* Adopted by the Committee at its seventy-seventh session (26 October – 5 November 2020)

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyen Song, Genoveva Tisheva, Franceline Toé-Bouda.



Background

1. The authors are S.B. and M.B., nationals of North Macedonia of Roma ethnicity, born in 1988 and 1985, respectively. Their complaint concerns denial of access to gynaecological services, notably a denial by a private health-care facility to register them as patients based on their ethnicity, and the lack of gynaecological services in the area in which they live as a form of discrimination against women. They claim that they are victims of a violation of their rights under articles 1, 2 (a), (c) and (e) and 12 of the Convention owing to the State party's failure to introduce positive measures in favour of the sexual and reproductive rights of Roma women, resulting in inequality in practice in the authors' enjoyment of their right to health. The Convention and the Optional Protocol thereto entered into force for the State party on 17 February 1994 and 17 January 2004, respectively. The authors are represented by counsel, Natasha Boshkova.

Facts as submitted by the authors

2.1 The authors both live with their partners, with whom they each have three children. They are Roma by ethnicity and live in the biggest Roma community in North Macedonia in the municipality of Šuto Orizari. They submit that Roma women in Šuto Orizari experience obstacles to exercising their right to access to high-quality gynaecological services, owing to the lack of such services in the municipality itself, even though more than 13,000 women of reproductive age live there. The difficulties that they face are also attributable to prejudices and discrimination against Roma by health-care professionals working in gynaecological practices in the city of Skopje.

2.2 Prior to the events described in the complaint of the authors, there had been several reported cases of similar discriminatory treatment of Roma women at the practice of a gynaecologist, Dr. L.K. In order to obtain evidence of the discriminatory behaviour of the gynaecologist, two civil society organizations, the Helsinki Committee for Human Rights and the Health Education and Research Association, developed a test scenario. The test, or simulation, was conducted at the health facility by female participants of Roma and non-Roma ethnicity (the authors of the present communication and control subjects), all of Macedonian nationality, who were of reproductive age and in need of gynaecological treatment.

2.3 On 16 December 2015, one of the authors (S.B., 28 years old on the day of the simulation) went to the private health facility of Dr. L.K. and asked to be enrolled as a patient and to have a regular gynaecological check-up. The nurse employed at the facility refused to register her, claiming that the doctor no longer accepted young patients. On the same day, a non-Roma control subject (23 years old on the day of the simulation), asked to be registered with the same gynaecologist. The nurse proceeded with the registration and, 20 minutes later, she was examined by the doctor.

2.4 On 18 December 2015, the second author (M.B., 30 years old on the day of the simulation) also requested to be enrolled as a patient, but she was rejected on the same grounds, namely that the doctor was no longer accepting young patients. On the same day, another control subject (25 years old on the day of the simulation) had her request for registration at the practice approved, and she was examined on the same day.¹

2.5 The authors submit that, although they were involved in a simulation, they were, in fact, looking for a gynaecologist closer to their municipality so that they could have

¹ It is to be noted that the simulation included another woman of Roma origin, who was rejected on the same grounds. The details of the case are not set out herein as no complaint has been filed on behalf of the third Roma individual, as she failed to pursue her claims before the domestic authorities.

access to gynaecological treatment without travelling to a more remote area, which entailed an additional financial burden for them. They further claim that they experienced emotional pain and suffering as a result of the discriminatory conduct of the private health-care provider.

2.6 On 13 September 2016, the authors filed a lawsuit against the private health facility. They asked the court to establish a violation of their right to equal treatment and to award non-pecuniary damages.

2.7 On 5 April 2017, during a court hearing, witnesses from both sides were heard. The defendant's witnesses did not refer to the exact events of December 2015 but spoke in general about the professional work of the gynaecologist. In her statement at the end of the hearing, the defendant explained that she had changed her policy towards Roma patients because, once, the Health Education and Research Association had brought to her practice a Roma couple (a husband and a wife with an infection). They wore filthy clothes and had an unpleasant smell, and after they left, she had to disinfect and ventilate the room as the patient "had a pungent smell, smelled like a sewer" and the gynaecologist feared that other patients might avoid her practice.

2.8 On 7 June 2017, the court rejected the authors' claims as unfounded. The court found that the authors did not act to meet their own needs; rather the events were to be seen as part of a simulated project of the Health Education and Research Association, which was confirmed also by the report of the Association itself and the statements of the witnesses.² The court further stated that the authors were not discriminated against based on their ethnicity but rather, they were rejected because they failed to submit their complete medical file (they were not carrying their health identification cards and medical records). The authors appealed the decision.

2.9 On 17 May 2018, the appellate court delivered its decision without holding a public hearing. It rejected the appeal and upheld the first instance decision. According to the authors, the appellate court did not provide a reasonable justification for the decision. According to the authors, domestic remedies were thus exhausted.

Complaint

3.1 The authors claim that the State's failure to provide them with effective protection against discrimination in access to health-care services amounts to a violation of their rights under articles 1, 2 (a), (c) and (e) and 12 of the Convention, taking into consideration the Committee's general recommendation No. 24 (1999) on women and health.³ They contend that the lack of gynaecological services in the area in which they live is a form of discrimination against women and that the State party's failure to introduce positive measures in favour of the sexual and reproductive health rights of Roma women resulted in inequality in practice in the authors' enjoyment of their right to health.

3.2 The authors contend, in particular, that they have suffered discrimination, as they were refused enrolment as patients by the local gynaecologist and denied a

² The control subjects stated that they had been engaged by the Association to play a role in exchange for compensation.

³ The authors refer extensively to the concerns expressed by the Committee in its 2006, 2013 and 2018 concluding observations on the combined initial, second and third periodic reports, the combined fourth and fifth periodic reports and the sixth periodic report of the Former Yugoslav Republic of Macedonia. See, respectively, [CEDAW/C/MKD/CO/3](#), paras. 27 and 28; [CEDAW/C/MKD/CO/4-5](#), paras. 16, 33, 37 and 38; and [CEDAW/C/MKD/CO/6](#), paras. 11 (c), 19, 20 (c), 37 and 38. They also refer to the concluding observations of the Committee on Economic, Social and Cultural Rights on the combined second to fourth periodic reports of the Former Yugoslav Republic of Macedonia ([E/C.12/MKD/CO/2-4](#)), paras. 49 and 50, and its general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 12 and 21.

regular gynaecological examination owing to their ethnicity, while non-Roma women were admitted and examined on the same day. They also claim that the court had lacked an understanding of the nature, specificity and intersectionality of the discrimination, as well as its root causes and harmful effects, especially on ethnic minority women, and of the reversed burden of proof falling on the defendant.⁴ It had neglected the defendant's discriminatory statements that she did not want to admit "that kind of people" into her practice, that "the patient had a pungent smell, smelled like a sewer". It had underestimated the emotional trauma and ignored the psychological suffering of the authors owing to the refusal, while other women from the majority ethnic background had received gynaecological services immediately. It had also disregarded the statements of the control subjects who had experienced different, quite opposite, treatment to that reserved for the authors. The court had also disregarded the poor financial situation of the authors, who needed access to gynaecological services close to their area of residence in order to reduce travel expenses. The court's decision lacked motives and an analysis of the statements of the victims and the situation that they were facing; its reasoning was based solely on the defendant's statements.

State party's observations on admissibility and the merits

4.1 The State party provided its observations in a note verbale dated 22 August 2019. It submits that, in 2019, the Ministry of Labour and Social Policy, in cooperation with civil society organizations and the national coordinating body on non-discrimination, following the implementation of the laws, secondary legislation and strategic documents on non-discrimination, started providing basic training on non-discrimination and against hate speech. The training includes a presentation on the provisions of the new Law on Prevention of and Protection against Discrimination of 2019 and is designed for all national institutions and municipalities. In 2019, the recipients of the training included employees of the inspectorates, the State Labour Inspectorate and the Employment Agency, judges, lawyers, trade unions and all social work centres. Funds have been secured to continue the training activities until 2021. In 2020, the training programme is also to be delivered to health-care professionals.

4.2 The State party refers to the Constitution, submitting that "every citizen shall be guaranteed the right to health care" and "citizens shall have the right and duty to protect and promote their own health and the health of others". Furthermore, the State party provides an overview of the legal framework on prevention of and protection against discrimination and the laws related to health protection and patients' rights, notably referring to the Law on Health Care⁵ and the Law on the Protection of Patients' Rights.⁶ It maintains that patients are entitled to exercise the rights granted by those laws or by a ratified international treaty without discrimination on the grounds of sex, race, skin colour, language, religion, political or any other opinion, national origin or social background, affiliation with an ethnic minority, material status, sexual orientation or any other status.

4.3 The State party affirms that discrimination is prohibited in the provision of health care and that the personality and dignity of every patient must be respected.

⁴ The authors explain that victims of discrimination have the right to seek court protection in a civil procedure, in which they can submit all the facts and evidence that justify their claim by establishing a *prima facie* case of discrimination, while the burden of proof that no discrimination has occurred falls on the defendant during the proceedings (art. 38 of the Law on Prevention of and Protection against Discrimination of 2010).

⁵ With regard to the health-care principles enshrined in the Law, the State party quotes article 4 on human rights and values in health care and article 9 on the principle of fairness.

⁶ The State party refers to the safeguards to protect patients' rights based on the principle of humanity and the principle of availability of health-care services.

The patient has the right to care, treatment and rehabilitation in accordance with his or her individual needs and capabilities and the right to improve his or her health, with a view to achieving the highest possible personal level of health. The patient has the right to personal security during his or her stay at a health institution. In order to promote patients' rights, the municipalities and the city of Skopje have established a standing commission on the promotion of patients' rights pursuant to the provisions governing local self-government. Furthermore, the State party refers also to the provisions of the Law on Health Insurance.

4.4 The State party submits that, in addition to the legal regulations, for the purpose of improving the availability and quality of health care for vulnerable categories of citizens, the Ministry of Health establishes specific programmes. It envisages measures and activities aimed at raising the awareness of the population about healthy lifestyles and proper health behaviour in the preconception, antenatal, postnatal and breastfeeding periods, and at improving the quality and equality of the access to health-care services for mothers and children from vulnerable categories, such as Roma women and women in rural areas.

4.5 As part of the implementation of the Decade of Roma Inclusion 2005–2015 and the Strategy for the Roma, in 2012, the Ministry of Health started the project, "Roma health mediators", in cooperation with the civil society sector. The project aims to overcome barriers in communication between the Roma population and health-care professionals. Through field visits, the project identifies persons or families without access to health care and informs them about access to health care and health insurance, and about the availability of free health-care services envisaged by the Ministry to improve the health status of the Roma population. The health mediators are based in the relevant municipality health-care centres so that they are easily accessible to the population and to the health-care professionals. The Ministry of Health undertakes such activities to prevent any type of discrimination on the grounds of race or any other grounds and condemns such discrimination.

Authors' comments on the State party's observations on admissibility and the merits

5.1 The authors provided their comments on 9 November 2019. They note that the State party does not object to the admissibility of the communication or to the facts, the claims of discrimination suffered or the lack of effective protection against such discrimination. Instead, the State party's reply provides a brief overview of the legal framework on prevention of and protection against discrimination and the laws related to health protection and patients' rights.

5.2 According to the authors, the State party has an obligation to address all aspects of its obligations under the Convention. They recognize that the adoption of the Law on Prevention of and Protection against Discrimination of 2019 is a significant step towards combating discrimination against women. However, they argue that the State party failed to present the manner in which it secures effective implementation of the law in order to eliminate unequal treatment of women, including the most marginalized. Moreover, to date, the Parliament has still not elected the members of the commission for prevention and protection against discrimination, which is supposed to be an independent professional body for promoting equality and preventing discrimination and to serve as an effective mechanism for protection against discrimination.

5.3 The authors submit that the State party did not describe steps directly aimed at eliminating customary and all other practices that are prejudicial to women and perpetuate the notion of their inferiority and stereotyped roles of women and men, which violates their rights to sexual and reproductive health. Moreover, no significant

progress has been made, at the national or local level, in eliminating prejudices towards and stereotypes surrounding Roma people, in particular those affecting Roma women.

5.4 Apart from the training of professionals, including judges and lawyers, on the new aspects of the Law on Prevention of and Protection against Discrimination, the State party failed to fulfil its obligation under the Convention to take a variety of steps to ensure that women and men enjoy equal rights under the law and also in practice, thereby ensuring that Roma women do not face barriers in accessing gynaecological services.

5.5 The authors note that Roma women continue to face barriers to access to gynaecological services in their municipality and the gynaecological facilities near the municipality of Šuto Orizari. Since 2018, there has been a gynaecologist in the municipality;⁷ however, that has not improved the access to services of the Roma women, in particular. The gynaecologist is from Albania and barely speaks Macedonian or the Roma language. Thus, Roma patients experience a language barrier in their access to high-quality health-care services. In addition, the doctor has publicly expressed her religious beliefs that define her pro-life stance as a gynaecologist. Accordingly, she tries to influence women to change their decision to terminate pregnancy since abortion is against her religious beliefs.⁸

5.6 The authors add that, in 2019, the Initiative of Roma Women in the municipality of Šuto Orizari documented more than 60 cases in which women were unlawfully charged for gynaecological services that should have been provided free of charge in accordance with the Law on Health Insurance (e.g., opening of a medical file, ultrasound examinations, blood and urine tests, Pap test, microbiological tests). A total of 22 individual petitions were lodged with the Ombudsperson's Office alleging the charging of illegal fees by the gynaecologist for her services. In most of the cases, the Ombudsperson referred the petitioners to the State Health and Sanitary Inspectorate. So far, none of the cases has been resolved. Illegal charges continue to be a significant barrier for Roma women in accessing gynaecological services.⁹

5.7 The authors further state that the municipality of Šuto Orizari has a local action plan. However, health-related activities have not been implemented yet under the plan owing to a lack of finances. The municipality has adopted a programme on the implementation of the general measures for protection of the population against contagious diseases for 2019, yet the authors allege that no specific measures have been taken to improve the enjoyment by Roma women of their sexual and reproductive health rights.¹⁰

5.8 As a result of the systemic discrimination against Roma women and the ongoing indifferent attitude of institutions regarding the lack of available, accessible and affordable gynaecological services, the authors have chosen to enrol as patients of the outpatient clinic's gynaecologist in their municipality of Šuto Orizari. It is the best option for them with regard to physical accessibility as it is near their homes.

⁷ Previously, there had been no gynaecologist in the neighbourhood for a decade since no one wanted to work there.

⁸ Counsel provides a copy of a journalist's story about the effects of the gynaecologist's service in Šuto Orizari in the Macedonian language and a translation into English.

⁹ The Health Education and Research Association and the Initiative of Roma Women in the municipality of Šuto Orizari.

¹⁰ Counsel provides the response of the municipality of Šuto Orizari to the request of the Initiative of Roma Women in the municipality of Šuto Orizari for free access to public information. The five general measures currently being implemented are the provision of safe drinking water, the disposal of wastewater, the provision of sanitary-technical and hygienic conditions in public premises, regular health controls and vaccinations, and preventive disinfection and pest control in public spaces and the sewage system.

However, the illegal charges for health-care services that should be provided free of charge to pregnant women represent an additional barrier in their attempts to regularly monitor their sexual and reproductive health and receive health information in a language that they understand.

5.9 In the light of such considerations, the authors invite the Committee to conclude that there has been a violation of their rights under articles 1, 2 and 12 of the Convention and to grant them pecuniary damages for the court and attorney's fees and non-pecuniary damages resulting from the inability to enjoy their rights and the stress, anxiety, fear and humiliation that they have suffered.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4) of the Committee's rules of procedure, it is to do so before considering the merits of the communication.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.¹¹ In that connection, the Committee notes the authors' contention that they have exhausted all available effective and relevant domestic remedies. While considering that legal condition to be an essential requirement for the admissibility of a communication, it also notes that the State party has not brought any argument to the contrary and has not challenged the admissibility of the communication on any grounds. The Committee therefore considers that, in the particular context of the authors' case of denied access to health care, the available domestic remedies have been exhausted. Accordingly, in the present case, it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the present communication.

6.4 Having found no impediment to the admissibility of the communication, the Committee declares the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and by the State party, as provided for in article 7 (1) of the Optional Protocol.

7.2 The Committee notes that the authors claim that they have suffered intersectional discrimination based on both their gender and ethnicity, in violation of article 2 (a), (c) and (e) of the Convention. It takes note of their contention that the State party failed to: (a) ensure the practical realization of the principle of non-discrimination as concerns access to and provision of gynaecological services; (b) ensure through a competent national tribunal the effective protection of the authors against any act of discrimination; and (c) take all appropriate measures to eliminate discrimination against the authors by any person, organization or enterprise. It also

¹¹ *E.S. and S.C. v. United Republic of Tanzania* ([CEDAW/C/60/D/48/2013](#)), para. 6.3; and *L.R. v. Republic of Moldova* ([CEDAW/C/66/D/58/2013](#)), para. 12.2.

notes their assertion that the State party's failure has a particularly disproportionate and discriminatory effect on Roma women and girls.

7.3 The Committee first recalls that discrimination against women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation and gender identity, that discrimination based on sex or gender may affect women belonging to such groups to a different degree or in different ways to men and that States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.¹²

7.4 The Committee further notes the authors' assertion that Roma women systematically face stigma in their access to gynaecological services and that women from the Roma community tend to be disproportionately affected as compared with other women who are of reproductive age and in need of gynaecological services. The Committee also notes the authors' claim that the State party failed to take appropriate positive measures for the elimination of the discriminatory practice and failed to provide any adequate remedy to the authors. In that connection, the Committee recalls its concerns about the financial, cultural and physical barriers to gynaecological services faced by Roma and rural women (CEDAW/C/MKD/CO/4-5, para. 33). It also recalls the obligation of States parties to eliminate multiple forms of discrimination against women who may suffer from discrimination based on, *inter alia*, race, ethnic or religious identity, including through using temporary special measures.¹³ It further recalls that, in its concluding observations on the State party's combined fourth and fifth periodic reports (CEDAW/C/MKD/CO/4-5, para. 19), it recommended that the State party adopt temporary special measures, *inter alia*, in situations in which women from ethnic minorities were disadvantaged. The Committee observes that the authors were treated differently from other women of reproductive age not belonging to ethnic minority groups who were seeking gynaecological services in the same time. The Committee also observes that the right to be free from discrimination entails not only treating people equally when they are in similar situations, but also treating them differently when they are in different situations.

7.5 The Committee notes the authors' contention, which remained unrefuted by the State party, that the courts lacked an understanding of the phenomenon of discrimination and of the vulnerability of Roma women in society and, despite the evidence of unequal treatment, failed to establish that the gynaecologist had demonstrated a discriminatory attitude and to provide redress. It also notes the authors' argument, also unrefuted, that the court lacked an understanding of the shifting of the burden of proof in a *prima facie*¹⁴ discrimination case to the defendant to establish that discrimination had not occurred.

7.6 The Committee considers with appreciation the information provided by the State party concerning the adoption in 2019 of a new legislative framework on the prevention of and protection against discrimination, especially in the health sector, the training programme implemented by the Ministry of Labour and Social Policy and the Ministry of Health and the project on Roma health mediators as part of the implementation of the Decade of Roma Inclusion 2005–2015. However, it observes that the State party's overview of legislation and measures is of a general nature and does not address the concrete situation and grievances of the authors of the present communication. In the absence of further information on file, the Committee therefore gives due weight to the authors' detailed allegations. It observes that the State party

¹² General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 18.

¹³ General recommendation No. 25 (2004) on temporary special measures, para. 12.

¹⁴ Accepted as correct until proved otherwise.

did not ensure the practical realization of the principle of equality and the effective protection of the authors against any act of discrimination by any person, organization or enterprise, which constituted a breach of the authors' rights under articles 1 and 2 (a), (c) and (e) of the Convention.

7.7 The Committee further notes the authors' claims that they faced serious obstacles to the enjoyment of their health rights, in breach of article 12 of the Convention. The Committee notes that it remained undisputed that the authors were refused enrolment as patients at the practice of their local gynaecologist and denied a regular gynaecological examination free of charge despite their poor financial situation, while women of reproductive age from the majority community were accepted as patients and examined on the same day. In that connection, the Committee recalls that States parties' compliance with article 12 of the Convention is central to the health and well-being of women and that special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups. States parties should report on measures taken to eliminate barriers that women face in access to health-care services and to ensure that women have timely and affordable access to such services, in particular those related to reproductive health.¹⁵

7.8 The Committee observes that the State party did not contest those facts and failed to provide any concrete information to the effect that the authors were offered access to any sexual and reproductive health-care services and that appropriate measures were taken to secure the authors' access, in particular, to regular free of charge gynaecological services near their homes. In the absence of further information on file, the Committee concludes that the authors' rights under article 12 of the Convention were also violated.

8. In accordance with article 7 (3) of the Optional Protocol, the Committee is of the view that the facts before it reveal a violation of the rights of the authors under articles 1, 2 (a), (c) and (e), and 12 of the Convention. The Committee refers to its general recommendations No. 24 and No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

9. In the light of the above conclusions, the Committee makes the following recommendations to the State party:

(a) With regard to the authors:

- (i) Provide them with appropriate reparation, including through the recognition of the material and moral damages that they suffered as a consequence of their inadequate access to sexual and reproductive health care, in particular to regular gynaecological services;
- (ii) Provide them with access to affordable health-care services, in particular sexual and reproductive health care;

(b) In general:

- (i) Adopt and implement concrete and effective policies, programmes and targeted measures, in accordance with article 4 (1) of the Convention, including temporary special measures, taking consideration of general recommendation No. 25 (2004) on temporary special measures, to combat intersecting forms of discrimination and stereotypes against Roma women and girls, including in health care, ensuring that language is not a barrier in accessing health services;
- (ii) Effectively implement new legislation relating to health, and guarantee and ensure access to affordable and high-quality health care and sexual and reproductive health-care services without language barrier, in particular

¹⁵ See general recommendation No. 24 (1999) on women and health, paras. 2, 6 and 21–23.

effective access to regular gynaecological examinations free of charge, and prevent and eliminate the practice of charging women and girls, in particular Roma women and girls, unlawful fees for public health-care services; take administrative measures to eliminate the unequal distribution of gynaecological services in the territory of the State party and allocate financial resources to support the equitable regional distribution of gynaecological facilities, especially in rural areas and areas in which Roma women and girls live;

(iii) Increase the awareness of judges on non-discrimination, including the procedural aspect of shifting the burden of proof during judicial proceedings; and ensure that women have recourse to effective, affordable, accessible and timely judicial remedies, to be addressed in a fair hearing by a competent and independent court or tribunal, where appropriate, or by other public institutions, taking into consideration the Committee's General Recommendation No. 33 on women's access to justice;

(iv) Provide training for health-care providers on discrimination against Roma women and girls, their specific needs and the problems that they face;

(v) Engage actively, including through the provision of financial support, with civil society organizations (including human rights and women's organizations) representing Roma women in order to strengthen advocacy against intersectional forms of discrimination based on sex, gender and ethnicity and promote tolerance and the equal participation of Roma women in all areas of life;

(vi) Ensure that Roma women and girls, as individuals and as a group, have access to information about their rights under the Convention and are able to effectively claim their rights;

(vii) Reinforce the application of temporary special measures, in line with article 4 (1) of the Convention and taking into consideration the Committee's general recommendation No. 25, in all areas covered by the Convention in which women and girls belonging to ethnic minority groups, in particular Roma women and girls, are disadvantaged;

(viii) Develop specific poverty alleviation and social inclusion programmes, in particular for Roma women and girls;

(ix) Allocate adequate funds and prioritize regional cooperation within Europe and development programmes to combat all forms of discrimination, including intersectional discrimination, and to promote inclusiveness.

10. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to have the Committee's views and recommendations translated into the State party's language, to publish them and to have them widely disseminated, in order to reach all sectors of society.
