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THE RIGHT TO HEALTH IS A FUNDAMENTAL PART OF OUR HUMAN RIGHTS

Context and importance of the problem

Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components, which are legally enforceable.

The Right to Health and access to health is a human rights issue. Non-discrimination, justice and equity of access to health care, all require that specific policies are put in place to address the needs of people that are affected by some illness. It does not matter if it is a rare condition or a financial one, because rarity of the issue should not impede health care and treatment, since health is a fundamental right for all, regardless of

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social status or the condition people suffer from.

Health through the human rights' lenses makes the case of the right of people to seek and obtain health care and treatment and the obligation of the state to deliver it.

The human right to health is recognized in numerous international instruments. International covenants affirm that facilitating access to health care is a crucial component in attaining the overall wellbeing of all people. The Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including medical care". Similarly, Article 12 of the International Covenant on Economic, Social and Political Rights (ICESPR) recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Parties to the Covenant commit to "achieving progressively the full realization" of this right, including "the creation of conditions which would assure to all medical service and medical attention in the event of sickness". Let us recall the aims of the Treaty of the European Union with a quote from the Preamble: we are resolved to "*ensuring the safety and security of people*". "*The Union's aim is to promote peace, its values and the well-being of its peoples*", further from article 3: "*The Union shall combat social exclusion and discrimination*". Central is Article 2 which provides that "everyone's right to life shall be protected by law". The EU Charter of Patient's Rights with Article 35 provides for a right to health protection as the "right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices". Article 35 specifies that the Union must guarantee "a high level of protection of human health", meaning health as both an individual and social good, as well as health care. This formula sets a guiding standard for the national governments: do not stop at the floor of the "minimum guaranteed standards" but aim for the highest level, notwithstanding differences in the capacity of the various systems to provide services.

Despite their differences, national health systems in European Union countries place the same rights of patients, consumers, users, family members, vulnerable populations and ordinary people at risk. Despite solemn declarations on the "European Social Model" (the right to universal access to health care), several constraints call the reality of this right into question. As European citizens, we do not accept that rights can be affirmed in theory, but then denied in practice, because of financial limits. Financial constraints, however justified, cannot legitimise denying or compromising health as a human right. We do not accept that these rights can be estab-

lished by law, but then left not respected.

There are many civil (patient) rights being violated with denying the right to health to the people, which are regulated and guaranteed with the UN and EU documents, conventions, charters, etc., which are: the inviolability of human dignity and the right to life; the right to the integrity of the person; the right to security; the right to the protection of personal data; the right to non-discrimination; the rights of the child; the rights of the elderly; and the right to social security and social assistance.

In addition, the Universal Declaration of Human Rights in Article 7 prescribed that “all are equal before the law and are entitled without any discrimination to equal protection of the law” which practically means that by the fact of denying healthcare and treatment to people regardless of the reason (financial or other regulation, etc.), the doctor’s and/or hospital’s decision is violating the Declaration and a broad number of human rights.

“The right to the highest attainable standard of health” requires a set of social criteria that is conducive to the health of all people, including the availability of health services, safe working conditions, adequate housing and nutritious foods. Achieving the right to health is closely related to that of other human rights, including the right to food, housing, work, education, non-discrimination, access to information, and participation.

The right to health includes both freedoms and entitlements. Freedoms include the right to control one’s health and body (e.g. sexual and reproductive rights) and to be free from interference (e.g. free from torture and from non-consensual medical treatment and experimentation). Entitlements include the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health.

Health policies and programmes have the ability to either promote or violate human rights, including the right to health, depending on the way they are designed or implemented. Taking steps to respect and protect human rights upholds the health sector’s responsibility to address everyone’s health.

In Macedonia, the human right to health is recognized in the state’s Constitution. Article 39 of the Constitution specifies that: “every citizen is guaranteed the right to health care. Citizens have the right and duty to protect and promote their own health and that of others”. Furthermore, more detailed regulation of the health as a human right can be found in the Law on Health Care, the Law on health insurance and the Law on protection on patients’ rights.

With the international covenants, agreements and the domestic legislation, health as a human right is regulated quite well - legally, but the factual situation in the country shows that there are still some issues that need appropriate attention. Discrimination, denying access to health care, slow action of the Ministry of Health and the Health Insurance Fund regarding inquires, complaints and appeals, some difficulties in exercising the rights to compulsory health insurance, the right for compensation funds for absence from work due to pregnancy, maternity leave, sickness and injury at work, the right of referral to treatment abroad, the privileges of completed hospital treatment, issues with minorities, in particular the Roma community, etc.

The ombudsman's office works for solving these issues, but they need the institutions to be open for communication in order to effectively exercise this human right.

Acting upon the citizens' complaints regarding the health care and the health insurance, the Ombudsman initially comes to a conclusion that the citizens face difficulties and long procedures in order to obtain their rights. Mostly, the citizens ask for an intervention by the Ombudsman due to delays of the procedures regarding their requests or complaints to the Ministry of Health and the Health Insurance Fund. In this context, the citizens complain because the first instance institution fails to act promptly to cases in which the Ministry of Health approves the citizens' complaint and sends the case back for reconsideration and decision. The same has been noted with the Ministry of Health, especially regarding the failure to act promptly upon a judgement of the Administrative court. The Ombudsman concludes inefficiency in acting upon the citizens' requests and exceeding the deadlines for acting and deciding, for which he submits recommendations to the abovementioned authorities, and informs the Minister of Health with a special report.

In order to realize the situation regarding the untimely acting by the Health Insurance Fund and the Ministry of Health, after the citizens' requests and complaints, the Ombudsman conducted a survey through a questionnaire submitted to every regional office of the Fund, and to the Ministry of Health, after which he prepared a special information with conclusions, and he recommended:

- **Taking measures** to improve the current work of the regional offices of the Health Insurance Fund and the Ministry of Health for a timely and effective decision making process regarding the requests / complaints of citizens, while respecting the deadlines.
- **Continuous training and education of the officials** for implementa-

tion of the legislation in the field of health care and health insurance when deciding on a specific citizen right, as well as making full and comprehensive regulations for a unified action of the authorities.

- **Improving the communication and cooperation** between the regional offices of the Health Insurance Fund, The Health Insurance Fund of Macedonia and the Ministry of Health. Submission of the required documents for a rightful and objective decision making process, regarding requests / complaints of the citizens within the legal timeframe, as well as solving the case appealed by the competent Ministry, in cases where the conditions provided by law are met.
- **Improvement of the conditions and support** of the work of the regional offices of the Health Insurance Fund in terms of the IT – technical sector, for an uninterrupted, fast and efficient handling of the citizens' inquires.

One of the issues the citizens face with is the dissatisfaction with the amount and the way the participation for the health services provided is calculated. Regarding this issue, the Ombudsman addresses the clinics and the Health Insurance Fund in order to state the actual condition. In cases in which the Fund determines a mistake in calculations, measures are taken and the citizens are charged with the real amount of the participation.

Moreover, there are numerous complaints regarding the illegal charges of health services which, according to the legislative, are free, as well as charging the citizens a higher amount of participation without issuing receipts. Such complaints are usually filed by women and girls of the Roma community, because of the lack of gynecologists in the municipality they live in, and because of the treatment they get from the selected gynecologists in other municipalities.

In order to establish the factual situation, the Ombudsman addresses the Health Insurance Fund and the State Sanitary and Health Inspectorate, in each case, to perform control of the pointed gynecological health institutions and to sanction possible unlawful conduct of those gynecologists.

The citizens face long procedures for decision-making regarding treatments abroad, because of which the Ombudsman requests acceleration of the procedures and decision-making within the legal deadline.

The citizens absent from work due to pregnancy, maternity, sickness, injury, etc. also face the issue of delaying procedures in exercising their right of salary compensation. The Ombudsman's interventions to accelerate the procedure for exercising this right are successful.

Regarding the citizens' complains for an improper, unprofessional and

low quality treatment, given that the Ombudsman is not qualified to evaluate the actions of the doctors, he addresses the State Sanitary and Health Inspectorate and the Medical Chamber with requests to perform supervision and to determine whether the medical protocols and rules were followed by the doctors during the provision of treatment.

Also, the Ombudsman acts upon complaints for refunding and recognition of funds by the regional offices of the Fund regarding provided health services or drug procurement. In most cases, the citizens' costs for health services are not recognized because they have been performed in clinics that do not have a concluded contract with the Fund. Whereas, citizens that use the services in clinics which have concluded a contract with the Fund after the Ombudsman's intervention, exercise their right, i.e. their funds are refunded.

After the complaints from citizens, especially members of the Roma community, for not being able to receive a discharge letter from several clinics in Skopje due to patients' unpaid debt for provided health services, the Ombudsman confirms the allegations that the complainants were conditioned by clinics in Skopje to pay the debt for the provided health services in order for the discharge letter to be issued. The Ombudsman noted a violation and pointed out to the clinics' directors that a discharge letter should not by any means be conditioned to a prior payment of debt or participation for the health services provided, because the discharge letter is issued after the end of the hospital treatment and the citizens need it for further treatment. The points made by the Ombudsman were accepted in all cases and the citizens were given the discharge letter.

Policy recommendations

- Improving the protection of health as a human right through implementation of penalties for doctors and/or institutions that violate this right.
- Reducing the response time of the Ministry of Health and Health Insurance Fund regarding inquires, complaints and appeals.
- Improving the protection of the socially insured and eliminate the difficulties in exercising the rights to compulsory health insurance.
- Improving and reducing the required procedures for medical treatment abroad.
- Improving and reducing the required procedures for compensation funds for absence from work due to pregnancy, maternity leave, sickness and injury at work.

- Improving the health care access and health care treatment, in particular for Roma women, and improving the health services provided for these women.
- Enforcement of penalties for doctors and/or institutions that are not issuing the patient's discharge papers and use that to blackmail the patients, to get them to pay their debt in the medical institution for the provided services.

Executive summary

The right of Health is a Human Rights issue. Health through the human rights' lenses makes the case of the right of people to seek and obtain health care and treatment and the obligation of the state to deliver it. This right is regulated with international covenants, agreements and national legislation. Exercising this right should be simple, effortless and financially accessible. But, that is not always the case.

Discrimination, denying access to health care, slow action of the Ministry of Health and the Health Insurance Fund regarding inquires, complaints and appeals, some difficulties in exercising the rights to compulsory health insurance, issues with minorities, in particular the Roma community and many more issues are arising in everyday practice.

The best way to deal with the challenge of resolving these issues is to improve the protection of health as a human right through implementation of penalties for doctors and/or institutions that violate this right, to improve the medical procedures and to reduce the waiting timeline for resolving patients' situations, to respect the international instruments and national laws which are regulating the right to Health. Together we should provide protection for this compulsory right, and make the exercising of this right as easy and effortless as possible. Every citizen has the right to health and health care, and everyone should respect it by providing better access to this right.

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