



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Former Yugoslav Republic of Macedonia
<b>Title:</b>	Problems in the implementation of the Abortion Law
<b>Date:</b>	18 December 2015
<b>Expert:</b>	Mirjana Najchevska
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Legal and practical confusion surrounding abortion procedures
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation / national court decision
<b>Field:</b>	Pregnancy and maternity
<b>Applicable law:</b>	Law on Pregnancy Termination, Official Gazette No. 87/2013

### Content

**Case law:** The NGO 'Hera' initiated public debate on the problems concerning the implementation of the Law on Pregnancy Termination. It revealed three cases, two of which involved pregnant women being forced to wait three or four days for a pregnancy termination, despite the medically diagnosed death of the foetus, as they were waiting for the decision of the First Level Commission of the Gynaecology Clinic in Skopje. These women did not lodge any judicial or non-judicial procedures.

The third case involved a pregnant woman who was informed by three different specialists that her foetus had a high probability of malformations. The woman requested permission to terminate the pregnancy according to the Law on Pregnancy Termination, but was refused by the First Level Commission, without reasoning. As instructed by this Commission, she lodged a complaint to the second level; the Commission at the Ministry of Health. This Commission refused the complaint because '...there were no anomalies of the foetus that could be expected to affect normal life after birth...'. The claimant fought this decision before the Administrative Court of Law of Skopje.

**Decision of the Court:** The Administrative Court decided on the case almost six months after the claimant's appeal,<sup>1</sup> and it needed a further five months to deliver the judgment to the claimant. The Administrative Court ruled in favour of the claimant, but not on merit reasoning. Rather, this was due to the incompetence of the second level Commission. It was based on the fact that six months after the adoption of the Law, there was an amendment (Official Gazette No. 164/2013) of the Law abolishing the Commission at the Ministry of Health and stipulating that as a second level commission the State Commission on Administrative and Working Relations Procedures (within the Governmental Cabinet) should act in these cases. Furthermore, the Court instructed that 'another procedure be undertaken' but in accordance with the Law. However, in the

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<sup>1</sup> Judgment U-5 No. 1242/2014 of 17 March 2015; still not published.

meantime, the claimant gave birth to a baby with malformations; hence another procedure for termination of pregnancy was meaningless.

**Key points of analysis:** By revealing these cases to the public, the NGO 'Hera' has drawn attention to serious deficiencies in the 2013 Law on Pregnancy Termination. These concern both the discriminatory legal provisions and the implementation of the Law in a humiliating and degrading way for the pregnant women, particularly for the woman waiting for an administrative decision regarding the dead foetus. The legal framework introduced in 2013 in fact took out the decision making process from the women (in consultation with her gynecologist) and put that right in the competence of state bodies.

Furthermore, the quick legal change (the amendment of the law completed in less than six months) created legal confusion even among the professionals that are responsible for the implementation of the Law. In the view of the author, this is extremely significant because there are no instructions on how to initiate the procedure for termination of pregnancy and no informative websites. Hence, the women depend solely on the oral instructions given by their gynaecologists.

**Internet link source:**

Announcement of the conference: <http://hera.org.mk/?p=3700>, accessed 8 October 2015.  
Media coverage: <http://www.time.mk/c/44c3294fa8/pocnaa-da-se-sumiraat-stetnite-rezultati-od-zakonot-za-prekin-na-bremenosta.html>, accessed 8 December 2015.