



ROMA
ORGANIZATION FOR
MULTICULTURAL
AFFIRMATION

METHODOLOGY

*for legal advocacy of the
health of Roma*



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I: INTRODUCTION

Article 1

This methodology for legal advocacy of the *health of Roma* is the main frame for work of the Legal department in the area of human rights, according to which the involved parties take relevant legal actions.

Through the Methodology, as a tool based on legal arguments and arguments of applied policies, the health of Roma is treated as basic human right.

Article 2

Legal actions are aimed primarily to provide conditions, opportunities and protection in exercising the rights to health care and insurance of Roma in Macedonia, which are or could be excluded by the institutional system.

Through the legal actions, realization and protection of other related rights can also be provided, such as interconnected rights i.e. right of social protection, regulation of civil status, right to equal access to public institutions, right to non-discrimination, with a special focus on women and children.

At the same time, violation of the rights is monitored individually and systemically, and is basis for undertaking action that aim to eliminate procedural obstacles in the procedures for exercising the rights, as in cases of non-equal treatment in access to health services that endanger health of Roma patients.

Legal actions are implemented through:

- legal empowerment
 - informing, education and legal advice about the application of the legal provisions in exercising and protection of the rights;
- advocating in front of health institutions and other relevant institutions
 - direct cooperation with health institutions/relevant institutions and monitoring of the procedures, as well as collecting information on the amendments;

- legal correspondence: submitting complaints, appeals, requests, charges, lawsuits in order to achieve or protect the rights;
 - direct cooperation, consultations with the authorities for protection of the rights of the citizens;
 - interventions and responses in a written form and organizing meetings, if adequate protection mechanisms have not been already undertaken;
- strategic litigation
- preparation of a legal analysis of the legal provisions that cause procedural/systemic barriers based on the monitoring of the application of the legislation;
 - commencing initiatives in front of legislative organs for amendments to the legal legislation;
 - documenting and monitoring cases when Roma have faced non-equal treatment in access to health services and related violations of the rights;
 - direct cooperation, consultations with law offices and judicial authorities to provide judicial protection for identified violations of the rights;
 - support of Roma for initiating law proceedings for violation of the rights which refer to damages of the work and functioning of the health institutions/relevant institutions.

Article 3

Existing national legislation has been applied in the preparation of this Methodology, and of particular interest are the following laws:

- ❖ Law on health care,
- ❖ Law on health insurance,
- ❖ Law on protection of patients' rights,
- ❖ Law on prevention and protection against discrimination,
- ❖ Law on social protection,
- ❖ Law on free legal aid.

Article 4

Actors - subject to observation that are covered by this Methodology are: Roma community, Ministry of Health of the Republic of Macedonia, Health Insurance Fund of Macedonia, Private health institutions of primary health care, Public health institutions of secondary and tertiary health care, Public Prosecution Office, Ombudsman, State Sanitary and Health Inspectorate, Commission for protection against discrimination, lawyers and legal practitioners, Organs of the judiciary system, Ministry of Justice and the Parliament of the Republic of Macedonia.

Article 5

This Methodology regulates the manner of collecting and analyzing data and information because of the need to evaluate procedures and obstacles in exercising the rights, as well as identifies violations of the rights, as main source of information for undertaking/initiating legal actions.

II: MEANING OF THE TERMS USED IN THIS METHODOLOGY

Article 6

Certain terms used in this methodology have the following meaning:

1. "Data" - a fact represented by a word, figure or image that has been obtained as a result of collecting and sharing information;
2. "Information" - a combination of related data acquired through communication, observation, medium or otherwise;
3. "Quantitative analysis" - numerological calculation of the number of documented cases;
4. "Qualitative analysis" - defining various obstacles in the process of exercising, violations of the rights of health care and non-equal treatment in the access to health services by determining the degree of sensitivity and vulnerability, measures to prevent future obstacles and violations that could occur;
5. "Collecting information" - cycle structured through different phases starting from collecting, through information interpretation and their dissemination;
6. "Monitoring" - systematic collection and processing of information that can be used to improve decision making, and to inform the public directly or as a tool for feedback on implementation, evaluation and policy formulation;
7. "Health" - state of complete physical, mental and social wellbeing and not just merely absence of disease or weakness;
8. "Health institution" - institution established and operating in accordance to the regulations on health care;
9. "Relevant Institution" – a state organ/body with constitutional or legal mandate that indirectly through acquisition of the proceedings in its jurisdiction, affects the implementation of the procedure of the health institution and exercising the rights to health care for the citizens.

10. “Non-equal treatment” - is any active or passive behavior of any person that is public authority, according to whom all people are not equal i.e. equal in terms of their rights and obligations, which creates grounds for granting or non-granting privileges of any person in an unjustified manner or exposes the person to unjustified and degrading treatment compared to other persons in a similar situation.
11. “Violation of rights” - any unjustified action or inaction by physical or legal persons that violates basic human rights.
12. “Strategic litigation” - individual cases brought in front of the legislative or judicial power against the state administration bodies and other related bodies and organizations that have public authorizations in Macedonia which expose the barrier in exercising or violation of the rights of Roma representatively and in accordance to the international and national legal standards, and the same would result in systemic change and benefit for the wider community.
13. “Involved parties of first instance” - the parties who are originally involved in the process of identifying, documenting and acting in a particular case in the field of health care.
14. “Involved parties of second instance” - parties that are covered in the process of consultation after an identified case can not be solved by involving the involved parties from the first instance.



III: COLLECTING AND ANALYSING DATA AND INFORMATION

Article 7

In order to collect and analyze data and information among the involved parties, there is a need of determining a center (Legal department) for receiving and exchanging data and information as well as active analysis that enables:

- communication between the health institutions/relevant institutions and Roma community,
- coordination among all parties involved,
- continuous support by professionals, experts and other organizations or interested parties,
- community confidence towards the association and its recognition in the field of its action,
- consistency and availability of the association to the community.

Human resources that are inevitable for functioning of the Legal department are: a coordinator, a lawyer and field assistant.

Article 8

Information and data are received through:

- field assistant,
- associate from a health institution/relevant institution,
- Roma community,
- association and organization with similar or same goals and target group,
- media (TV, radio, newspapers, etc.),
- social networks.

Article 9

After gathering preliminary information on the person (client) that requires undertaking legal action because of exercising or protection of the rights, *Client's file* is opened in the process of collecting the necessary documentation, and processing of the data starts in order to evaluate obstacles or violation of the rights.

The Client's file is the basis for undertaking further actions, and is stored in an electronic database as well as a photocopy or printed form (*Annex 1*).

Article 10

Analysis is done by the coordinator, lawyer and field assistant, through:

- Assessment of collected data (in terms of quality and importance of the data and the confidentiality of the source) by considering the entire documentation and a conversation with the client;
- Classification of the case and making a decision about undertaking further legal actions;
- Informing the client and consultation, as well as seeking agreement on action in the case;
- Offering logistical support/assistance or advocating in front of the health institution/relevant institution, depending on the classification and the decision made upon the case;
- Preparation of a **Report** on the made decisions, actions, responses and solutions in the case by the health institution/relevant institution;

– Graphic of the process: *Annex 2* –

IV: PROCESS OF STRATEGIC LITIGATION

Article 11

Analysis may be quantitative and qualitative, and it is basis for *Monitoring* of the application of legislation and the work and functioning of the health institutions/relevant institutions:

- quantitative analysis enables monitoring of the occurrence and frequency of the same or similar cases/proceedings,
- qualitative analysis enables identification of violations of the rights.

Article 12

From the quantitative analysis of the documented cases, anytime when systemic obstacles in the application of certain provisions of the legislation that impede exercising of the rights are determined, certain actions are undertaken in order to initiate legal initiative to adopt amendments that will enable institutions to overcome the obstacle.

Therefore, the following activities are undertaken:

- preparing legal analysis and identification of the disputed laws and their non-compliance that is analyzed in terms of current, retroactive application, as well as compliance with the constitutional provisions,
- providing official statistics from the health institutions/relevant institution in support of an identified obstacle by sending Requests for public information,
- providing expert assistance and mobilizing interested organizations in order to define the steps and arguments about the need for legislative initiative,
- submitting interventions to the relevant institutions/facilities,
- implementing media activities for alerting the public and conducting public pressure on the existence of the obstacle and the need to overcome it,

- organizing meetings with MPs and coordinators of parliamentary groups in the Parliament of the Republic of Macedonia to provide support for the suggested changes/ amendments,
- organizing public meetings and debates in order to involve the general public in consideration of the problem and the suggested solution,
- suggesting proposal - amendments and their submission to the Parliament of the Republic of Macedonia.

Article 13

From the qualitative analysis of the documented cases, cases where there are indications that a criminal offense had been committed and it caused damage, endangered person's life and health, on the basis of negligent treatment of ill people or non-equal treatment, arising from the operation and functioning of the health institution or a relevant institution, certain actions for litigation are undertaken.

Basic data and information are put in a chronological **Chart of strategic case** that is continuously upgraded based on undertaken actions which enable timely and parallel interventions among multiple involved parties.

Article 14

Strategic case is being analyzed in consultation with an attorney's office in order to prepare court protection and signing a Contract for legal services, and thereby the following actions are undertaken:

- determination of the need to collect additional evidence for a trial,
- searching of the relevant practice in the database of the European Court of Human Rights in Strasbourg (HUDOC database),
- searching the relevant court practice of the Macedonian legal system and international legal systems similar to the Macedonian in order to establish relevant means of evidence that can be used in the process of advocacy.

Judicial protection of the cases initially is provided at national level by taking advantage of all domestic legal remedies, and depending on the outcome of the proceedings, statutory deadline for completion of the process and exercised right, certain measures are being undertaken in order to protect the rights in front of international judicial instances.

Article 15

Court protection is based on two procedures, criminal and civil.

- ❖ Criminal procedure begins at the initiative i.e. request of three parties, namely:
 - The client (personal interest to exercise individual rights),
 - The association (general interest to exercise rights of a particular target group),
 - The public prosecutor (to exercise rights of public interest ex officio).
- ❖ Civil procedure for determining the liability of the person - perpetrator of the damage, as:
 - parallel process undertaken by a criminal proceeding,
 - process that is undertaken independently of the criminal proceeding.

In order to prepare lawsuit for civil liability, actions for expertise are undertaken to determine the degree of responsibility of the person-perpetrator of the damage, while effective completion of criminal proceedings by which guilt is determined, may also serve as evidence in the proceeding.

V. STORAGE OF RECEIVED INFORMATION AND DATA, MONITORING AND REVIEW

Article 16

All obtained information that are analyzed, selected and documented, are kept in accordance to the legal regulations on personal data protection and regulations for archiving and classifying.

The person whose case has been documented signs *Privacy statement on use of the personal information* in accordance with the Law on personal information, and power of attorney to authorize a lawyer to undertake appropriate actions against violation of the right (Annex 3).

Article 17

All stages of the process should be subject of continuous monitoring and assessment of their success in order to provide conditions for reviewing the system of documenting and acting upon reported cases in terms of their easier structuring and identify obstacles/violations.

VI: APPLICATION OF THE METHODOLOGY

Article 18

In preparation of the Methodology, taking into consideration data, analysis and relevant experience, the following parties were included: association Roma Organization for Multicultural Affirmation ROMA S.O.S. - Prilep, the Office of the Deputy Ombudsman - Bitola, CRPRC STUDIORUM - Skopje.

The first review was made in June 2011 in accordance to the needs of the association and acquisition of the status of authorized association that provides free legal aid.

This sample of the Methodology is the second review prepared in consultation with the European Center for Roma Rights.

Article 19

The Methodology can be changed or amended upon the assessment of the members of ROMA S.O.S. - Prilep.

Article 20

Methodology and its annexes enter into force on the day of its signing by the executive director of ROMA S.O.S.- Prilep.

VII: ANNEXES

Annex 1. Form and content of a Client's file

CLIENT'S FILE No.

1. Personal information

- Date of application:	
- Name and surname:	
- Sex:	<input type="checkbox"/> female <input type="checkbox"/> male
- Permanent address:	
- Date of birth:	
- Phone:	
- Personal Identification Number	
- ID number:	
- Marital status:	<input type="checkbox"/> single <input type="checkbox"/> married <input type="checkbox"/> live in community with a partner <input type="checkbox"/> divorced <input type="checkbox"/> widow/widower <input type="checkbox"/> other _____
- Education:	<input type="checkbox"/> none <input type="checkbox"/> primary school (finished/not finished) <input type="checkbox"/> high school (finished/not finished) <input type="checkbox"/> higher/postgraduate studies

2. Subject of work in accordance with the Legal regulation

- Legal advice
- Law on health protection
- Law on health insurance
- Law on social protection
- Law on protection of patients' rights
- Law on free legal aid
- Law on prevention and protection against discrimination
- Request for personal documents
- Other _____

3. How was the information about the case received?

4. Explain the problem and legal action that was undertaken.

5. Clarifying the way that aid was offered:

A) visit of the health facility/institution

Whom with _____

B) visiting the client in his/her home

C) transferring the case to an associate

To whom _____

D) Other _____

Legal provision/Public policy that was applied:

6. How did the case end?

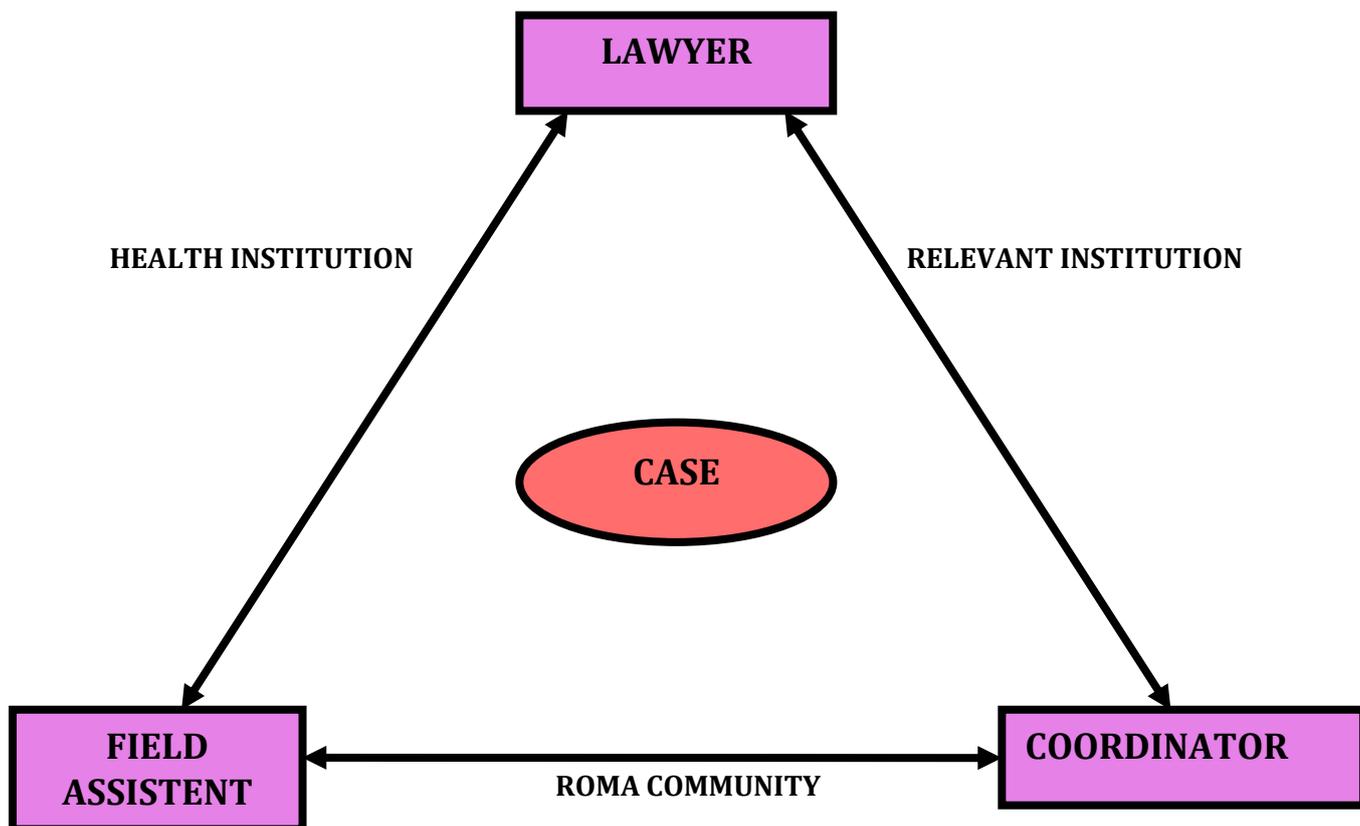
7. Challenges or successes highlighted by this case.

The case was led by: _____

The case was verified by: _____

Place and date: _____

Annex 2. Involved parties of first instance in documenting and acting upon a case



Annex 3. Form and content of a Personal privacy statement

STATEMENT

I the undersigned _____ from _____,
 street _____, with ID card reg.no. _____ and
 Personal Identification Number _____, *give my consent* my
 personal data to be processed and exploitable by the association ROMA S.O.S. Prilep
 located at ‘Dabnicka’ no.31 Prilep, and championed by the an authorized agent
 Nesime Salioska, the procedure for exercising the right

 _____.

According to Article 11 of the Law on protection of personal information
 (Official Gazette, 7/05 and 103/08) informed I am by the jurist of the association for
 the purposes of taking of personal data, the users of my personal data, compulsoriness
 of giving the answers questions, the possible consequences of not responding and the
 existence of the right to access my personal data.

Prilep

Stated:

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