

PROJECT
“ROMA HEALTH – BASIC HUMAN RIGHT”



L A W
INITIATIVE
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*Foundation Open Society Macedonia via:
Law and Health Initiative – New York and
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Summary: Advocacy for amending laws that exclude low income and unemployed people from health insurance

In November 2012, the Macedonian Constitutional Court abolished a provision incorporated in the *Law on Contributions to Compulsory Social Insurance* adopted in 2011, which obliged unemployed and low income persons to re-register their health insurance before a fixed deadline by submitting a *Statement of income for the previous year*. The Court's decision has not been appropriately implemented, which resulted in the exclusion of about 50% of the people insured with the Health Insurance Fund (HIF) from the public health system.

The association ROMA S.O.S. implemented an advocacy campaign in 2013 and 2014 year to ensure proper implementation of the decision of the Constitutional Court and to remedy the exclusion of low income groups from health insurance. Advocacy tools included submitting interventions to the Ministry of Finance, Ministry of Health and the Ombudsman, and initiating a legislative amendment by organizing meetings with the Parliamentary Commission for Health, the Committee on Labor and Social Policy, and two members of the ruling party. Efforts also focused on raising public awareness by involving the media, citizens, associations, and experts. The advocacy campaign coincided with the period of new national-level elections.

Our advocacy efforts eventually forced the ruling party to include the proposed legislative amendments as a priority on their agenda. Further to a governmental meeting in October 2014, the Ministry of Finance submitted the amendments to Parliament. On 1 December 2014, the Parliament adopted the amendments to the Law on Contributions to Compulsory Social Insurance and abolished the obligation for citizens to submit a statement of income. The Health Insurance Fund is responsible for checking the income of citizens in collaboration with the Public Revenue Office and in that way to establish their right to health insurance.

At the end of 2014 and early 2015, the other 50% insurers who have fulfilled their obligation and filed *Statements of income* to the Health Insurance Fund of Macedonia in the process of re-registration, faced criminal charges for the crime of "Use a document with false content" since after processing of the data by Public Revenue Office it was found that they have higher income than they have stated. Many of the criminal charged ended in court and judges on the proposal of the public prosecutors, in a short proceeding without trial and without citizens' knowledge, issued judgments with a penalty warrant according which they were sentenced 3 months in prison, one year probation and were required to pay a sum of three thousand denars.

The association ROMA S.O.S. implemented a *Concept for legal protection of citizens* in 2015 year by which was established a wide coalition with 11 associations and 4 lawyers to mobilize the accused, protect them in front of the courts and advocate for legislative additions according which the charges will be stopped and citizens released from the burden of dealing with the consequences from unconstitutional/illegal provision.

The activities within the *Concept* included broad share of information in roma communities through distribution of promotive materials, sending requests to all Public Prosecutors, Basic Courts, Ombudsman, Health Insurance Fund, the Government. Media were also included in actualizing the issue.

In june 2015 the Government brought a decision on one of their meetings to reply to the citizens needs and initiated additions to the *Law on health insurance* by which all accused citizens under the named charge will be released.

In line with the proposed 95a addition to the Law, ROMA S.O.S. prepared an amendment 95b by which same citizens were released from the request for compensations of costs and on 11 June the additions to the Law were fully accepted by the Parliament of RM.

Conclusion

The power of targeted and well-timed advocacy can abolish laws and practices and contribute to the realization of health rights of vulnerable individuals.

Message 1

Legislative tools can create both obstacles to and remedies for citizens in access to the health system and implementation of the right to health.

Message 2

Citizens' mobilization can positively influence the health policy priorities of governments and legislators.

"50% of the insured persons in the Health Insurance Fund of Macedonia, unemployed and people with lower incomes, faced termination of the right to health insurance, and the other 50% faced with criminal charges and claims for compensation".

Statement of income for the previous year, a form which was used in the procedure of re-registration, base for initiating two legislative initiatives (first in 2013-2014, and second in 2015).

1. What was the lead to this statement?

A pregnant woman gave birth in April 2013 at the department of gynecology and obstetrics in P.H.I. General Hospital "Borka Taleski" - Prilep and at the time of discharge from the hospital instead of joy she received shock - an invoice in the amount of 13,000 denars, cost of health service calculated for a person without health insurance. On the other hand, the same woman has received blue cards until March that year as a confirmation that she is insured by the Health Insurance Fund of Macedonia based on unemployment.

The woman refers to ROMA S.O.S. for help and information about this situation in which it is determined that she has not filed a Statement of income in the procedure for re-registration in the Health Insurance Fund of Macedonia due to which she was not entitled to the right of health insurance. During the same month and the next, ROMA S.O.S. registered another 280 similar cases (men, women and children) after which arises the question:

How many people have lost their health insurance and thus lead to a situation to participate in 100% of the requested health service?

2. What was the response of the Health Insurance Fund of Macedonia upon the question?

The response to the Request for information that we submitted to the Health Insurance Fund of Macedonia upon this question was as follows – by March 31st 2013 only 120,255 holders of health insurance in the territory of the Republic of Macedonia submitted a Statement of income of the total 227,276 registered insurers.

Namely, in January 2013 the Health Insurance Fund of Macedonia (HIF) announced a Call by which they asked all unemployed and persons with lower incomes, who are beneficiaries of the right on behalf of the state budget, to make a re-registration of their health insurance by submitting a Statement of income (personally signing the form) that do not have a higher income of 96.600 denars in the previous year in order to retain this right in the current year. While the deadline for filing the Statement was from February 1st to March 31st 2013.

3. What consequences did unemployed and persons with low incomes faced?

Health insured persons that were not informed for this obligation were finding out about it at the time when they were accessing health services or had the need to buy medicines at the pharmacy when actually they "were informed for all procedures":

- suspension of the right to health insurance,
- charging for using health services and supply of medicines up to 100% of the cost,
- prohibition for using orthopedic devices within 6 months,
- additional administrative costs for obtaining personal documentation required for re-realization of the right to health insurance as it is the first time.

4. What did ROMA S.O.S. do?

Having the interest to find legal means in order to overcome this situation, ROMA S.O.S. considered the legislation and concluded that this obligation for these category of citizens is introduced with the provisions of the Law on Contributions for Mandatory Social Insurance which entered into force on 14.04.2011.

However on 14.11.2012 was brought a Decision by the Constitutional Court by which it was abolished the obligation for citizens to submit Statements of income in the process of realizing the right to health insurance i.e. the Decision indicates the obligation of the Health Insurance Fund of Macedonia to check the amount of incomes for each insured person through Public Revenue Office as the competent authority.

Following to this, followed amendments to the Law on 25.01.2013 by which the obligation has not been removed for the citizens, and only was deleted the obligation of the Minister of Finance to prescribe the form and content of the form.

According to this, ROMA S.O.S. finds that the Constitutional Court's decision is not fully complied and applied by the Ministry of Finance, as an institution that is directly responsible for the law, due to which the situation occurred. In order to hold accountable for respecting the Decision, on 18.07.2013 interventions were submitted to the Ministry of Finance and Ministry of Health.

In addition, a Complaint was submitted to the Ombudsman to act in accordance with its responsibilities and to examine whether the Decision was fully implemented and executed, as well as an Appeal to the Commission for Health at the Assembly of R.M to review the matter as well.

The initiative was supported by 6 NGOs from Macedonia that signed the documents: ESE-Skopje, KHAM-Delcevo, SUMNAL-Skopje, NRC-Kumanovo, H.E.R.A.-Skopje and Macedonian platform against poverty.

4.1. What was the attitude of institutions?

Responses upon submitted Complaints were received in September 2013 according to which the Ministry of Finance and the Ministry of Health do not recognize our perception as an obstacle in realizing the right to health insurance, although aware that the number of people who lost their health insurance because of failing to submit a Statement is great. Additionally they give an explanation that the submission of a Statement by the citizens once per year is not a big obligation.

In contrast to this view, the Ombudsman confirms the perception of ROMA S.O.S. and shows that there is no full implementation of the constitutional decision and therefore requires immediate adoption of new legal amendments.

4.2. Initiative in front of the Parliament of the Republic of Macedonia

- ↪ 12.11.2013 – held meeting with the President of the Commission for Health, Mende Dineski who informed us that the Commission of Health is not a parent body and does not consider the disputed Law, but gave its support as an interested body, as well as the support by the parliamentary group of SDSM to stand for amendments of the law.
- ↪ 12.11.2013 – held meeting with the President of the Committee on Labour and Social Policy - Cvetanka Ivanova, MP Nedim Ramizi, from the parliamentary group of DUI, which were asked to support the initiative.
- ↪ 20.11.2013 – held meeting with the MP Mile Pachemski from the parliamentary group of VMRO-DPMNE and support of the initiative was requested.
- ↪ 20.11.2013 – a draft version of the Proposed amendment for changes of the Law on Contributions for Mandatory Social Insurance has been sent to the Members of the Parliament with whom meetings have been held.
- ↪ 02.12.2013 – at the first extension of the 77th session of the Parliament of the Republic of Macedonia, the President of the Commission of Health, Mende Dineski raised the issue in front of the Members of the Parliament and requested support for appropriate changes to the Law and full respect and implementation of the Decision of the Constitutional Court. Members of the Parliament from the political party VMRO-DPMNE did not give their consent for amendments.

4.3. Press - conferences to alert the public

- ↪ 16.07.2013 – ROMA S.O.S. at its premises in Prilep held a press-conference at which they elaborated the problem and the need of full respect of the Decision of the Constitutional Court.
- ↪ 24.10.2013 – at the premises of GEM Klub Skopje a press-conference was held about the activities which ROMA S.O.S. along with 6 other associations, supporters of the initiative, have undertook and called upon the institutions to implement fully the Constitutional Decision (<https://www.youtube.com/watch?v=KpjWF5q7dQE>).

4.4. Public discussion with the support of National Democratic Institute

- ↪ 18.12.2013 – at the hotel “Holiday Inn” a public discussion was held on *"Health insurance for all citizens in confusion: Who to listen in order to realize the right to health insurance?"*

At the public discussion through opening a consultative process with all interested parties, efforts were made in order to find mechanisms to solve the problem, the public was alerted and relevant institutions as well to undertake measures to prevent future loss of health insurance.

The public discussion was attended by NGOs and relevant institutions, and despite ROMA S.O.S. presentations and insights to the problem, presentations were also given by:

- 1) Renata Deskoska, Professor. PhD in Constitutional Law and Political System,
- 2) Vaska Bajramoska-Mustafa, Deputy Ombudsman,
- 3) Emilija Bozinovska, head of the health insurance department, Health Insurance Fund of Macedonia.

The event was presented in the media headlines of Telma TV, 24 News and Nova TV. (<http://novatv.mk/index.php?navig=8&vest=10303&cat=2>)

- ↪ 30.12.2013 – Conclusions and recommendations from the public discussion were sent to all Members of the Parliament as New Year greetings or 123 letters in total were sent to the Parliament of the Republic of Macedonia.

5. Situation in 2014

- ↪ 01 February – a Call was announced by the Health Insurance Fund of Macedonia for re-registration of health insurance for the unemployed and people with lower incomes, and Statements of income were submitted up to 31.03.2014, in order to extent the right to health insurance.
- ↪ 03 April – ROMA S.O.S. sent a Request for public information to the Health Insurance Fund of Macedonia to determine the exact number of people who have submitted a Statement of income.
- ↪ 25 April – a response from the Health Insurance Fund of Macedonia was received according to which out of 243.085 unemployed people, required documents have been submitted only by 135.583 people (55,78 percent) or for 107.502 people (44,22 percent) the right to health insurance was terminated in April 2014.
- ↪ 24 April – during the pre-election process in the RM (Parliamentary Elections) the issue was discussed at a Parliamentary debate no.1 that was attended by MPs from SDSM, DUI and DPA, and the same day at the press that was held the director of the Health Insurance Fund of Macedonia, Maja Parnardzieva-Zmejkova, announced that in the new election program of VMRO-DPMNE there are news related to automatic registration and deregistration of the health insurance that will endeavor to end the crowds and queues in the Health Insurance Fund of Macedonia caused by the compulsory re-registration by the people with low incomes and the unemployed. It was announced that persons would go through the procedure for re-registration of health insurance without subbmitin a Statement for income, while these data the Health Insurance Fund of Macedonia will receive from the Public Revenue Office by their mutual connection.
- ↪ 25 April – ROMA S.O.S. by welcoming these announcements and efforts, and reminding on the complete duration of the initiative, sent an Announcement to all the media entitled: *"More efficient, administratively simple health system" pre-election commitment of the political parties to the unemployed and people with lower incomes.*
- ↪ 01 June – the problem publicly presented by COD - the only TV magazine dedicated to investigative journalism, investigations of crime, corruption, judicial system, etc. Given statements by the director of the HIF, the deputy-Ombudsman, the deputy - Minister of Labour and Social Policy, two Roma who have lost the right to health insurance from Prilep, all followed by statements on the situation by ROMA S.O.S. and data generated from a survey of journalists - carrier of the magazine (<https://www.youtube.com/watch?v=086o9TS9Ygs&feature=youtu.be>).
- ↪ 26 June – a request for meeting was sent to the Director of the Health Insurance Fund of Macedonia, Maja Parnardzieva - Zmejkova to review offered solutions and possibilities to overcome the problem.

- ↪ 02 July – the Constitutional Court delivered Notification to the Ombudsman that it will not initiate a procedure for assessing the constitutionality of the articles of the law that provide the submission of a Statement of income in the procedure for exercising the right to health insurance since *submission of the statement is a way of receiving data on time about the generated income of the citizens in the previous year and aims to provide seamless access to health insurance, especially the most vulnerable categories of citizens and timely access to health services for them.* (the Ombudsman in December 2013 submitted a proposal to the Constitutional Court of the Republic of Macedonia for assessment of constitutionality and legality of the disputed parts of the Law on contributions for mandatory social insurance).

- ↪ 07 July – a meeting was held with the director of the Health Insurance Fund of Macedonia, Maja Parnardzieva-Zmejkova, Mrs. Emilia Bozhinovska - head of the department of health insurance, and two lawyers of the Health Insurance Fund of Macedonia, in which proposed solutions for introduction of automatic-electronic registration of citizens in the Health Insurance Fund of Macedonia and checking their income ex officio in cooperation with the Public Revenue Office were discussed. At the meeting it was noted that the Health Insurance Fund of Macedonia has already submitted a proposal to the Government of the Republic of Macedonia for amendments to the Law on contributions for mandatory social insurance and they expect response. They said that they are open to cooperate directly in further actions to achieve the goal that is of interest to all citizens. Additionally, at the meeting was confirmed the information that the Health Insurance Fund of Macedonia prepares and submits criminal charges for providing false data on the submitted Statements of income.

- ↪ **21 October – the government of the Republic of Macedonia held a meeting and adopted the Draft - Law on changes of the Law on contributions for compulsory social insurance and the Ministry of Finance as the proposer submitted it to the Assembly of the Republic of Macedonia, where among other things gave the following explanation:**
".....In order citizens to be released from the obligation to submit the Statement each year to the Health Insurance Fund, as well as to avoid the appearance of giving false statements to the net income, the law proposes to abolish the obligation to submit a statement of the net income of the citizens"

".....Data for the incomes of citizens the Fund will receive from the Public Revenue Office ex officio"

- ↪ 04 November – the Commission on finance and budget in the Parliament of RM as a competent working body reviewed the proposal and unanimously concluded that it is acceptable and should be given to further reading before the Legislative Commission.

- ↪ 06 November – Legislative Commission in the Parliament of RM considers the proposal and unanimously concluded that it is acceptable and should be given for further reading before MPs in the Parliament of the Republic of Macedonia.

- ↪ **12 November – held the second Plenary session no. 21 of the Parliament of RM on which the Proposal of the draft law and reports of commissions were submitted to MPs and thus opened a general discussion. In justification of the proposer or deputy - Minister of Finance, MPs have signed a word and everyone supported these changes in their speech. After the voting it was concluded that the Parliament adopted the conclusion or in other words the Proposal – law for changes could go on second reading in front of the parent body i.e. the Commission for finance and budget.**

- ↪ **18 November – the Commission on finance and budget in reviewing the proposal for the second time determined that in the deadline predicted with the Rulebook were not submitted any amendments from authorized bodies and forwarded the proposal to further proceedings in the Parliament.**

- ↪ **01 December – held a Plenary session No.24 in the Parliament on which from total 63 MPs present, 63 voted FOR, and it was found that the Parliament has adopted the Law on Amendments to the Law on contributions for compulsory social insurance.**

6. Situation in 2015

50% of the unemployed people and people with lower incomes who have fulfilled their obligation and filed *Statements of income* to the Health Insurance Fund of Macedonia in the process of pre-registration, at the end of 2014 and early 2015 faced criminal charges for the crime of "Use a document with false content" since after processing of the data by Public Revenue Office (PRO) it was found that they have higher income than they have stated.

Many of the criminal charges ended in court and judges on the proposal of the public prosecutors in a short proceeding without trial and without citizens' knowledge, issued judgments for a penalty warrant according which they were sentenced 3 months in prison, one year probation and were required to pay a sum of three thousand denars.

6.1. What did ROMA S.O.S. do?

↳ December 2014 – mobilization of associations and lawyers to engage in coordinated action for legal protection of persons who were criminally charged taking into account the following concerns:

- part of the people against whom proceedings have been started, claimed that at the Regional offices of the Health Insurance Fund of Macedonia they were given forms in which they had to circle one of the options by which they and were brought to confusion,
- in the judgments has been stated that the party was aware of the falseness of the Statement although PRO was not issuing *Certificates for data* for correctly calculated and realized income at the time when the Health Insurance Fund of Macedonia announced a call for submission of Statements of income (February-March), but in the period after June,
- basic public prosecutors acted differently i.e. part of the charges were dismissed and they did not run proceedings with the explanation that the case is not a criminal offence prosecuted ex officio, reported cases are obsolete, it is a case of minor importance, the person has no income, reported income is income of a family member,
- for the processed, unless an objection was submitted within 8 days from the day of receiving the Judgment, it would have become final and therefore persons would have become criminal offenders and would have been prevented to exercise other rights that require submission of a statement of non – conviction, the right to employment and the right to leave the country,
- although there was no ground, the Health Insurance Fund of Macedonia was requesting a compensation without a civil lawsuit for the health services that have been used during the year in which the person has given "false" statement for income, because health insurance contributions for these individuals have been paid by the Ministry of Health and the Health Insurance Fund of Macedonia has not suffered real damage, and by doing so only the vulnerability of unemployed and people with lower incomes has been deepening,

- individuals who were accused for the crime committed in 2011 and for whom a final decision was adopted, were likely to have repeated the same offense in 2012 and 2013. If within one year a second final judgment had been adopted, the same people would have been imprisoned for three months i.e. probation would have been executed,
- during the procedure it was necessary to be proven whether the income on which basis the charges were submitted is net or gross income and whether the income earned in the last two months has been taken into consideration. The law enabled realization of the right in situations when the person despite having income higher than 96.600,00 in the previous year, may continue his/her insurance if he/she has no income higher than 16.100,00 denars in the last two months, and it stood as an option in the Statement itself,
- accused citizens were not able to bear the financial burden of the defense by themselves since they belong to the poorest category of citizens (seasonal workers, welfare recipients, waste collectors, people with low education, etc.). On the other hand the Basic Court accepted Complaints submitted only by an authorized representative - a hired lawyer,
- typical for the Roma community, and taking into account the fact they live in illegal homes, was that if the address in the application of the Health Insurance Fund of Macedonia is different or changed from the actual place of residence, Roma had no opportunity to exercise their right to protection and to find out that they were accused.

↪ 22 January 2015 – *Concept for legal protection of citizens* was finalized in order to protect the persons who faced criminal charges by the Health Insurance Fund of Macedonia through which direct cooperation was established i.e. a coalition of 11 associations (NRC from Kumanovo, LIL from Skopje, H.E.R.A. from Skopje, CDRIM from Skopje, ESE from Skopje, RRC from Skopje, KHAM from Delcevo, Association for Roma Rights from Stip, Bairska Svetlina from Bitola, SONCE from Tetovo and Bela Kula from Kicevo) that work in the field of health care and insurance with Roma thus 4 lawyers from the 4th different areas of the Appeal Courts (Skopje, Stip, Bitola and Gostivar), that signed a Memorandum of cooperation and Contracts for legal services.

This ensured broad coverage and mobilization of the community in the following municipalities: Prilep, Bitola, Delcevo, Kicevo, Stip, Kumanovo, Suto Orizari, Tetovo, Gorce Petrov and Gostivar.

Advocacy was conducted in front of the competent bodies and courts, in order to defend the accused and acquit the charge as unfounded/illegal/unconstitutional, as well as to cause systemic change in the procedure or to provide complete legal protection of the citizens.

- ↪ 3 February – 22 Requests were sent to all Basic Public Prosecutors as competent to act upon the criminal charges submitted by the Health Insurance Fund of Macedonia and in order to determine the total number of criminal charges against the insurers of the Health Insurance Fund of Macedonia. There was an information that the Health Insurance Fund of Macedonia has filed criminal charges against 6 760 insurers in 20 municipalities for Statements submitted in 2011 and 2012.
- ↪ April/June – 2000 "ARE YOU ONE OF THE DEFENDANTS BY THE HEALTH INSURANCE FUND OF MACEDONIA?" flyers and posters were distributed in all 10 municipalities in order to inform the community about the possibilities of obtaining Judgment for issuing a penal warrant as well as where and whom to address in order to get legal aid.
- ↪ 23 March – one documented case in Bitola for which advocacy in front of the court has been provided and it was an example on which was investigated the court practice and its act upon this matter.
- ↪ 06 March – a national press conference was held in the hotel Holiday Inn in Skopje in which data obtained by the answers from Basic prosecutions were publicly presented, as well as citizens' reasons and consequences as a result of the actions of the HIF, the efforts of associations and appeal to citizens where and whom to address for legal aid in case they get Judgment with penalty warrant.
- ↪ 08 March – the problem, data and appeal to institutions and citizens were also actualized in the TV program KOD that was shot in the offices of ROMA S.O.S.
- ↪ 03 April – two representatives of ROMA S.O.S. were guests in the TV program PROCES on NOVA TV entitled as: "Judicial and Executive authorities against the poorest" and publication of a column in Radio Free Europe has followed on the topic "The state criminalizes health care."
- ↪ 03 April – on behalf of the Coalition a *Request for act* was sent to the Government of the Republic of Macedonia, the Ombudsman, the Public Prosecution Office and the Health Insurance Fund of Macedonia in which the consequences of the implementation of the Law on Contributions for Mandatory Social Insurance were highlighted until its last amendment in December 2014 and it urged the institutions to act in accordance with their authorization to find a favorable solution for the citizens and thus to overcome the problem.
- ↪ June – at the Government session and institutional dialogue between the Ministry of Health and Health Insurance Fund, the issue has been discussed and a conclusion on the need for amendments and exemption from prosecution of persons who are reasonably suspected of committing a crime "use of false documents" has been adopted. Regarding this government's decision at a press conference the director of the Health Insurance Fund, Saso Stefanovski stated: *"It appears that the harm done by*

this category of people is negligible i.e. in over 95% of the cases the damage that was caused to the Fund is equal to only a few thousand denars, and therefore, the Government responded to the call of citizens and voted for this measure, which of course is very favorable and will mean better social justice and peace for the families of more than 20 thousand beneficiaries of the Fund".

↪ 09 June – the 53rd Plenary Session of the Parliament of the Republic of Macedonia was held and under the 25th item of the agenda, proposal for adoption of amendments to the Law on Health Insurance in a shortened procedure was discussed, which added a new Article 95-a and by which individuals are exempted of prosecution, criminal proceedings are terminated, persons are fully exempted from execution of the sentence, erasing of the accusation is determined and its legal consequence is terminated for persons who are reasonably suspected of committing a crime “use of false documents” for which the Fund had submitted charges.

↪ 10 June – an amendment about amending the Law on Health Insurance by Article 95-b was submitted by ROMA S.O.S. to MP Liljana Popovska and applied to civil actions for compensation against users of compulsory health insurance for whom the Health Insurance Fund has filed criminal charges for false given statements and according to which it sought reimbursement for the health services that had been used.

The amendment was elaborated by the MP and adopted by the Commission for Health at the Parliament of the Republic of Macedonia on 11.06.2015.

<https://www.youtube.com/watch?v=SfTRatwITDo>

↪ **11 June – at the second session of the 53rd Session of the Parliament of the Republic of Macedonia with 62 voted in favor, members of the parliament adopted the Draft of the Law on Amending the Law on Health Insurance by the Article 95-a and 95-b.**