

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Working Group on discrimination against women and girls

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 42/16 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a proposed draft law aimed at amending and supplementing Act No. 576/2004 Coll. of Laws on health care, healthcare related services; Act No. 578/2004 Coll. of Laws on healthcare providers, health professionals, professional organisations in the healthcare sector; and Act No. 147/2001 Coll. of Laws on advertising; which would restrict access to induced abortion that is currently permitted on request, without restriction up to 12 weeks of pregnancy, and thereafter, if the woman's life is in danger or in cases of fetal impairment (sections 4 and 5, of the Act No. 73/1986 Coll. on artificial termination of pregnancy).

According to the information received:

The Draft Law No. 1729 (2019) was introduced to the National Council of the Slovak Republic in September 2019. The National Council conducted a first review of the draft law during its October session and voted to consider the draft law at a second stage of the legislative process. The second reading of the draft law is to be conducted during the parliamentary session in November 2019. According to the Explanatory Memorandum of the draft law, the aim of the proposed amendments is to ensure that "women are informed about the stage of their pregnancy prior to undergoing the induced termination of pregnancy; and prohibit the offering of induced termination of pregnancy by health providers through advertisement".

- Act 576/2004 Coll. of Laws on health care and on services related to health care: section 6 (b) on informed consent in relation to accessing induced abortion, requires: "written informed consent following prior instruction. The informed consent must specify the date when it was given and must be signed by the woman requesting the induced abortion or by her legal representative" (section 6b (1)); that "the instruction preceding the informed consent must include information about: a) the purpose, nature, procedure, and consequences of the

induced abortion; b) the physical and psychological risks associated with the induced abortion; c) the development stage of the embryo or foetus, and the entitlement of the woman to obtain a recording from an ultrasound examination; d) alternatives to having an induced abortion” (section 6b (2)). In cases of abortion on request, health providers are required to report to the National Health Information Center each such case with personal details and the abortion may only be performed 48 hours after the report has been submitted (section 6b (3)).

The proposed amendment modifies section 6b (2)(c) requiring that an ultrasound examination be a mandatory part of the information provided to the woman about the current stage of development of the embryo or foetus and performed prior to the induced abortion. The amendment also proposes the addition of paragraphs 5 and 6 to Section 6b; these paragraphs stipulate that: (5) “the physician shall ensure during the ultrasound examination that the woman is able to see the image of the embryo or foetus and, if technically feasible, also ensure that she can listen to the heartbeat of the embryo or the foetus. Along with the written information about the induced termination of pregnancy, the physician shall provide the woman with a printed record from the ultrasound examination showing an image of the embryo or the foetus whose development is to be terminated. (6) The ultrasound examination and the printed record from the ultrasound examination referred to in paragraph 5 are provided to the woman free of charge”.

- Act No. 578/2004 Coll. of Laws on healthcare providers, health professionals, professional organizations in the health sector: Annex 4 on the “Code of Ethics of Health Professionals”, authorizes the advertising by health professionals and healthcare providers of the “private medical practice, healthcare facilities and diagnostic and therapeutic procedures used”. The proposed draft law excludes the induced termination of pregnancy from the authorized advertising in paragraph 11 of the section entitled “Health professionals and the performance of their profession”.
- Act No. 147/2001 Coll. Laws on advertising: the proposed amendment adds to Section 7a) that “advertising of the induced interruption of pregnancy is prohibited”. Furthermore, the draft law provides that, for a violation of the prohibition of advertising induced termination of pregnancy, a fine up to 66, 400 euros will be imposed on those who order it or distribute it.

We wish to express our serious concern regarding the amendments proposed, which if adopted by the National Council of the Slovak Republic will impose obstacles to women’s access to sexual and reproductive health care and compromise their ability to make free, informed and autonomous decisions about their health and well-being. The proposed amendments requiring women seeking abortion to undergo a mandatory ultrasound, be forced to view a scanned image of the embryo or foetus and listen to its heartbeat does not appear to have any medical basis. The performance of an ultrasound does not appear to be subject to a woman’s consent, which runs the risk of rendering it a coerced procedure thereby potentially violating women’s ability to exercise the right to take decisions concerning their health and body without undue interference. Autonomy in

relation to access to health care, means that a woman seeking services in relation to her health, including sexual and reproductive health, is entitled to be treated as an individual in her own right, as the sole beneficiary of the services provided by the health-care practitioner and regarded as fully competent to make decisions concerning her own health. It is also our view, that the proposed amendment on advertising of abortion, if adopted will restrict access to information on termination of pregnancy and services provided to women in this regard and deter women from seeking professional medical attention, with detrimental consequences for their health and safety.

Abortion is a health care matter and access to safe and legal abortion is intrinsically linked to women and girl's right to life, health, equality, dignity and privacy. States have the obligation to respect, protect and fulfill women's right to equal access to health-care services and eliminate all forms of discrimination against women in relation to their health and safety. This obligation entails providing women with autonomous, effective and affordable access to health and ensuring that barriers to women's enjoyment of the right to the highest attainable standard of physical and mental health are dismantled, including by exercising due diligence.

Denying women access to information and services which only they require and failing to address their specific health and safety, including their reproductive and sexual health needs, is inherently discriminatory and prevents women from exercising control over their own bodies and lives.¹ Further, women may be denied such services through the reduction of availability and accessibility, deterrence from health care professionals and deprivation of women's autonomous decision-making capacity.

The Working Group has observed with concern that throughout their life cycle, women's bodies are instrumentalized and their biological functions and needs are stigmatized. The instrumentalization on women's bodies is often reflected on practices such as the withholding or delay in treatment, curtailment of women's autonomy and denial of respect for privacy and obstructing their access to reproductive and sexual health care. Furthermore, the legal restrictions to regulate women's control over their own bodies has been identified by the Working Group as a severe and unjustified form of State control, this can include regulations governing the provision of information related to sexual and reproductive health and termination of pregnancy. The enforcement of such provisions generates stigma and discrimination and violates women's human rights, by particularly infringing their dignity and bodily integrity and restricting their autonomy to make decisions about their own lives and health.

In connection with the above concerns, we would like to draw the attention of your Excellency's Government to the following international norms and standards. The International Covenant on Civil and Political Rights (ICCPR), to which Slovakia has been a party since 28 May 1993, refers to States' obligation to respect and ensure the

¹ Please see WGDAWG paper on Women's Autonomy, Equality and Reproductive Health available at: <https://www.ohchr.org/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>

rights of all individuals, without any distinction of any kind, including of sex (art. 2); the right to life (art. 6) and the right not be subjected to arbitrary or unlawful interference to one's privacy (art. 17).

Further, the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Slovakia has been a party since 28 May 1993, refers to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (art. 12). General Comment No. 14 on the Right to the Highest Attainable Standard of Health highlights that the right to health should not be understood as a right to be *healthy* but as a right which contains both freedoms and entitlements. The Committee on Economic, Social and Cultural Rights (CESCR) considers that the freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference. The entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health (para. 8). The Committee also indicates that States should refrain from limiting access to means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information (para. 34).

We would also like to recall to your Excellency's Government's attention that in its General Comment No. 22 on the right to sexual and reproductive health, the Committee notes that the right to sexual and reproductive health entails a set of freedoms and entitlements. The Committee considers that the freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health. Furthermore, the entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health (para. 5). The Committee also recalls that State parties should aim to ensure universal access without discrimination for all individuals to a full range of quality sexual and reproductive health care, including maternal health care, contraceptive information and services and safe abortion care (para. 45). The Committee refers to States parties obligation to repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information (para. 49 (a)).

In 2019, the ESCR Committee expressed deep concern that women in the Slovak Republic face multiple barriers to sexual and reproductive health services, including access to safe abortion, and will be subjected to further restrictions in this regard, if the legislative proposals recently presented to the parliament are passed into law. The ESCR Committee recommended that the State prohibit any exposure of women to biased or medically unsound information on the risks of abortion that impedes their access to sexual and reproductive health services; ensure the comprehensive protection of women's privacy throughout the abortion process; and avoid any further retrogression in relation to women's sexual and reproductive health (E/C.12/SVK/CO/R.3, paras. 41 and 42 (b), (d), (e)).

We would also like to recall a number of rights and principles guaranteed under the Convention on the Elimination of all forms of discrimination against women (CEDAW), to which Slovakia has been a party since 28 May 1993. The CEDAW refers to the obligation of State Parties to condemn discrimination against women in all its forms and pursue by all appropriate means a policy of eliminating discrimination against women (art. 2). Furthermore, the CEDAW provides imposes on States Parties the obligation to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, access to health care services, including those related to family planning.

Additionally, in its General Recommendation No. 24 on women and health, the Committee on the Elimination of all forms of discrimination against women notes that the obligation of States parties to ensure, on a basis of equality of men and women, access to health services, information and education implies an obligation to respect, protect and fulfill women's rights to health care (para. 13). Furthermore, State parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations. The Committee also recalled that States parties should in particular, require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice (para. 31 (e)).

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide additional information or comments you may have on the above-mentioned information, including on the process of revision of this bill.
2. Please provide detailed information on the measures that the Government intends to undertake with regard to the aforementioned bill which seems in contradiction with Slovakia's international human rights obligations.
3. Please provide information on the measures taken to ensure that the right of women and girls to the highest attainable standards of physical and mental health, including their sexual and reproductive rights is realized in line with international human rights standards.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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standard of physical and mental health

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