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Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: OL Health (2002-7) G/SO 214 (89-15)
SVK 2/2013

30 August 2013

Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 15/22, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged discriminatory law and practice related to access to contraceptive services in Slovakia.

According to information received:

Legislation enacted in 2011, Act No. 363/2011 Coll. of Laws on the Scope and Conditions of Coverage for Drugs, Medical Devices and Dietetic Foods by Public Health Insurance and on Amending and Supplementing Certain Acts (hereinafter "Act No. 363/2011 Coll. of Laws") prohibits public health insurance coverage of any form of modern contraception if intended, under Art I. sections 16(4)(e)(1) and 37(5)(c)(6), "for the regulation of conception."

To qualify for coverage, it is noted that several criteria, as described under Art. I section 7(1) of the aforementioned law, must be met. A drug or medical device must possess, inter alia, life-saving, curative or preventative qualities and should effectively contribute to the reduction of morbidity and mortality.

It is also noted that section 3 of Act of the Slovak National Council No. 73/1986 on Artificial Interruption of Pregnancy as amended by Act No. 419/1991, which previously had required that "prescription contraceptives on the prevention of

pregnancy, medical examinations and follow-up examinations associated therewith shall be provided to a woman free of charge” was abolished with the adoption of Act No. 363/2011 Coll. of Laws. Furthermore, it is reported that with the adoption of this new legislation in 2011, the Government cannot, under Art. I section 22(3)(b), regulate the price of contraceptives.

It is noted that the Constitution of Slovakia Act No. 460/1992 Coll. of Laws, as amended, explicitly affirms the principles of equality and non-discrimination in Art. 1 (1-2); the right to privacy in Art. 16(1) and; the right to health in Art. 40. Also, Art. 154(c)(1) of the same Constitution states that international human rights treaties to which Slovakia is party, including the Convention of the Elimination of All Forms of Discrimination Against Women (hereinafter “CEDAW”), the Convention on the Rights of the Child (“hereinafter “CRC”) and the International Covenant on Economic, Social and Cultural Rights (hereinafter “ICESCR”) are part of the legal order of Slovakia, “if they provide a greater scope of constitutional rights and freedoms.

While it is accepted that Act No. 363/11 Coll. of Laws applies to all citizens in Slovakia, regardless of gender, we would like to express our concern at the discriminatory effects of this current legislation on women and adolescent girls. The contraceptive coverage ban disproportionately affects women’s enjoyment of many economic and social rights including the right to health, the right to work and participation in public life, on an equal basis with men.

We further wish to express concern to your Excellency’s Government at information received regarding the current high costs of contraceptives in Slovakia, which are not subsidized or regulated. This severely disadvantages vulnerable groups of women and adolescent girls, such as low-income earners as well as those living in violent relationships, who often have little or no control over household income. It has also been reported that there is currently inadequate instruction on sex education in Slovakian schools, a lack of comprehensive information on contraception available to women by health care workers, and an insufficient regulation of the practice of conscientious objection.

Contraceptives help prevent unintended pregnancies and unwanted births which, in turn, can prevent pregnancy-related deaths and complications connected with frequent, early and unhealthy pregnancies. As such, they fulfill several of the above-mentioned criteria for coverage under Art. I section 7 (1) of Act No. 363/11 Coll. of Laws, as they possess the necessary “life-saving” and “preventative” qualities and, are clearly effective in contributing to reduced morbidity and mortality. In this connection, we would like to draw the attention of your Excellency’s Government to the international standards developed by the World Health Organization (WHO) and its 2013 Model List of Essential Medicines, whereby contraceptives are defined as essential medicines.

We would also like to take this opportunity to remind your Excellency’s Government of its obligations under CEDAW, succeeded by Slovakia on 28 May 1993.

Art. 12 (1) CEDAW commits State Parties to taking appropriate measures to eliminate discrimination against women in health care and ensure access to health care services by women and men, including those relating to family planning. Art. 16 CEDAW also requires State Parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women ... (e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”

In paragraph 21 of its General Recommendation No. 21 on *Equality in Marriage and Family Relations* (1994), the Committee on the Elimination of All Forms of Discrimination Against Women has noted that “the responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women’s lives and also affect their physical and mental health.”

In paragraph 17 of its General Recommendation No. 24 on *Women and Health* (1999), the Committee on the Elimination of All Forms of Discrimination Against Women reiterates the duty of State Parties “to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care.” It further notes in the same paragraph that “studies such as those which emphasize the high maternal mortality and morbidity rates worldwide and the large numbers of couples who would like to limit their family size but lack access to or do not use any form of contraception provide an important indication for States parties of possible breaches of their duties to ensure women's access to health care.”

Moreover, we wish to recall paragraph 43 of the recommendations from the 2008 Concluding Observations of the CEDAW Committee (CEDAW/C/SVK/CO/4), recommending that Slovakia “take measures to increase the access of women and adolescent girls to affordable health-care services, including reproductive health care, and to increase access to information and affordable means of family planning for women and men.” The CEDAW Committee has also addressed in its Concluding Observations the specific needs of women in rural areas to access contraception and family planning services.¹

We would also wish to take this opportunity to remind your Excellency’s Government of its obligations under CRC, succeeded by Slovakia on 28 May 1993. Art. 24 (1) CRC affirms that “States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

¹ CEDAW Committee, Samoa, CEDAW/C/WSM/CO/4-5 (2012), para 33 ; CEDAW Committee Panama, CEDAW/C/PAN/CO/7 (2010), para 41; CEDAW Committee, Nepal, CEDAW/C/NPL/CO/4-5 (2011), para. 32(g); CEDAW Committee, Cape Verde, CEDAW/C/CPV/CO/6 (2006), para 30; CEDAW Committee, Eritrea, CEDAW/C/ERI/CO/3 (2006), para. 23.

In paragraph 40 of its General Comment No. 4 on *Adolescent Health and Development in the Context of the Convention of the Rights of the Child* (2003), the Committee on the Rights of the Child has confirmed that “the realization of the right to health of adolescents is dependent on the development of youth-sensitive health care, which ... includes appropriate sexual and reproductive health services.”

In paragraph 56 of General Comment No. 15 on *the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health* (2013), the Committee on the Rights of the Child has also established that “States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health.”

In paragraph 70 of the same General Comment No. 15, the Committee has also recommended that “short-term contraceptive methods such as condoms, hormonal methods and emergency contraception should be made easily and readily available to sexually active adolescents. Long-term and permanent contraceptive methods should also be provided.”

We deem it appropriate to make reference to paragraph (nn) of the agreed conclusions of the 2013 Commission on the Status of Women, which provides that States “promote and protect the human rights of all women, including their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence; and adopt and accelerate the implementation of laws, policies and programmes which protect and enable the enjoyment of all human rights and fundamental freedoms, including their reproductive rights in accordance with the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action and their review outcomes.”

We also wish to recall again paragraph 43 of the 2008 Concluding Observations of the CEDAW Committee (CEDAW/C/SVK/CO/4), where the Committee recommended to Slovakia that the invocation of conscientious objection by health professionals be “adequately regulated ... so as to ensure that women’s access to health and reproductive health is not limited.” In the same paragraph, the Committee further reiterated that “it is discriminatory for a State Party to refuse to provide legally for the performance of certain reproductive health services for women ... if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.”

Similarly, in paragraph 69 of General Comment No. 15 on *the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health* (2013), the Committee explicitly stated that States should “ensure that adolescents are not deprived of any sexual and reproductive health information or services due to providers’ conscientious objection.”

In this connection, we would like to recall the decision of the European Court of Human Rights in *R.R. vs. Poland*, Case No. 27617/04, in which the Court ruled that States were obliged to organize their health services to ensure that the effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled.

Finally, we would also like to draw the attention of your Excellency's Government to the ICESCR, succeeded by Slovakia on 28 May 1993. Art. 12 CESCR recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." In its General Comment No. 14, "The Right to the Highest Attainable Standard of Health", paragraph 8, the Committee on Economic, Social and Cultural Rights has elaborated that this basic right to health also encompasses "the right to control one's...body, including sexual and reproductive freedom." Women and men should enjoy "... access to safe, effective, affordable and acceptable methods of family planning of their choice."

In addition, paragraph 14 of General Comment 14 of the Committee on Economic, Social and Cultural Rights indicates that reproductive health means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth. Moreover, paragraph 34 of the referred General Comment indicates that States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health.

Paragraph 24 of the 2012 Concluding Observations of the Committee on Economic, Social and Cultural Rights (E/C.12/SVK/CO/2) to Slovakia includes the clear recommendation that the State should extend public health insurance coverage to sexual and reproductive health services, including modern prescription contraceptives.

Since 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. Are the facts alleged in the summary accurate?
2. Please provide full details on the aforementioned law and explain how its provisions comply with your Government's obligations under international human rights law.
3. Please provide details of any measures taken to ensure the enjoyment of the right to health, including sexual and reproductive health, of all girls and women in Slovakia.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

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

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discrimination against women in law and in practice

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