

1 June 2009

Dear Honorable:

Prime Minister of the Government of the Slovak Republic, Robert Fico

Deputy Prime Minister for Knowledge-based Society, European Affairs, Human Rights and Minorities, Dušan Čaplovič

Minister of Health Care, Richard Raši

Minister of Labour, Social Affairs and Family, Viera Tomanová

Minister of Foreign Affairs, Miroslav Lajčák,

Speaker of the National Council of the Slovak Republic, Pavol Paška

Chairperson of the Constitutional and Legal Affairs Committee of the National Council of the Slovak Republic, Mojmir Mamojka

Chairperson of the Committee on Human Rights, Minorities and the Status of Women of the National Council of the Slovak Republic, László Nagy

Chairperson of the Committee on Health Care of the National Council of the Slovak Republic, Viliam Novotný

Chairpersons of the Parliament Caucuses

Members of the National Council of the Slovak Republic,

The undersigned organizations and individuals respectfully submit this letter expressing our concern regarding the proposed amendments related to abortion currently under debate in Slovakia. We are particularly concerned with three aspects of the proposed amendments: the mandatory counseling requirement, the waiting period, and mandatory parental/guardian consent requirements for minors. We support the legal and policy analysis of the proposed amendments submitted to members of the Slovak Parliament by Slovak non-governmental organizations titled, Poslanecký návrh novely zákona o zdravotnej starostlivosti a jeho nedostatky z pohľadu ochrany práv žien, by JUDr. Adriana Lamačková, LL.M, Ph.D, which finds the proposed amendments in conflict with women's rights to privacy, physical integrity and autonomy, confidentiality, health, and non-discrimination.

The mandatory counseling requirement questions women's decision-making authority and includes unnecessary and questionable medical information to be provided to women requesting an abortion, such as the 'development stage of an unborn child', 'mental risks associated with induced abortion' and information on alternatives to abortion including 'psychological' assistance from organizations and churches. The '72 hour' waiting period which begins at the discretion of the provider and the parental/guardian consent requirements will unnecessarily delay abortion, decrease safety and may drive some women, especially adolescents, to undergo illegal abortions or seek abortions outside of Slovakia. The undersigned organizations and individuals also raise concerns with provisions concerning the gathering of statistics on induced abortion and request that patient confidentiality and privacy be fully respected. We strongly urge all members of the Slovak Parliament, as well as the representatives of the Slovak government to take

into consideration international medical and regional and international human rights standards when considering the proposed amendments.

The World Health Organization (WHO) guidelines on safe abortion provide concrete legal and policy considerations on the issues prescribed in the proposed amendments. WHO notes that women should be treated with respect and understanding and thus be given information in a way they can understand so that they can make a choice about having or not having an abortion to the extent permitted by law and free of inducement, coercion or discrimination.<sup>1</sup> According to WHO, counseling in cases of requests for abortion should be voluntary, confidential and provided by a trained person, and that “[a]t a minimum, abortion services should always provide medically accurate information about abortion, and offer non-directive counseling and contraceptive information and services...”<sup>2</sup> A waiting period not medically required is noted among the administrative and regulatory barriers to obtaining safe, legal abortion that unnecessarily delay care and decrease safety.<sup>3</sup> Parental notification or authorization is considered a requirement that deters women from seeking timely care and may lead them to risk self-induced abortion or clandestine services.<sup>4</sup> WHO notes that the same risk may occur in cases where providers cannot ensure confidentiality, a key principle of medical ethics.<sup>5</sup> Taking into consideration these guidelines will strengthen the capacity of the health system in Slovakia to provide effective access to safe and legal abortion.

Regional and international standards in the field of human rights are also in support of ensuring access and removing barriers to abortion, and to protecting confidentiality. The recent Parliamentary Assembly of the Council of Europe (PACE) Resolution 1607 (2008) *Access to safe and legal abortion in Europe* reiterated these principles and added that the decision on whether or not to have an abortion should be a matter for the woman concerned, and she should have the means of exercising this right in an effective way.<sup>6</sup> The European Court of Human Rights has also stated in the case of *Tysiack v. Poland* that the state’s positive obligation to secure effective respect for a pregnant woman’s right to private life requires that the regulation of the legal termination of pregnancy be clear about the legal position of the pregnant woman, and is not structured in a way “which would limit real possibilities to obtain [legal abortion].”<sup>7</sup> The European Parliament has recommended to Member States “that, in order to safeguard women’s reproductive health and rights, abortion should be made legal, safe and accessible to all.”<sup>8</sup> The United Nations Human Rights Treaty Monitoring Bodies have consistently advised state parties to ensure access to reproductive health care services by removing barriers to legal abortion, including consent requirements and ensuring that women and girls do not have to undergo life-threatening clandestine abortions.<sup>9</sup> In addition, international human rights standards support the right to confidentiality of medical information. For example, in the case of *MS v Sweden*, the European Court of Human Rights stated that the release of medical records containing “highly personal and sensitive data ... including information relating to an abortion” is an interference with an individual’s private life. It held that while Sweden was not in violation of the Convention because of the country’s strong safeguards in place to protect medical data,

Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. The domestic law must afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention.<sup>10</sup>

We thank you for your consideration of this letter and express our hope that Slovakia will continue to ensure that its laws and policies on abortion respect women’s rights and include protection for informed and autonomous decision-making, privacy and confidentiality, in compliance with regional and international human rights and medical standards.

Respectfully yours,

## Organizations:

APAC-Suisse (Association de professionnels de l' avortement et de la contraception), Switzerland

Association Femmes Solidaires, France

Association Nationales des Centres d' Interruption de Grossesse (ANCIC), France

ASTRA –Central and Eastern Europe Regional Network on Sexual and Reproductive Health and Rights (25 membership organizations)

Albanian Family Planning Association, Albania

AnA: Society for Feminist Analysis, Romania

ANO "Women's Health", Russia

B.a.b.e. (Be Active, Be Emancipated), Croatia

Bulgarian Family Planning and Sexual Health Association, Bulgaria

Bulgarian Gender Research Foundation, Bulgaria

Center "Women and Modern World", Azerbaijan

CESI - Center for Education and Counselling of Woman, Croatia

Charitable SALUS Foundation, Ukraine

Gender Education, Research and Technologies, Bulgaria

Family Planning and Sexual Health Association, Lithuania

Federation for Women and Family Planning, Poland

Institute of State and Law, Russia

Latvia's Association for Family Planning And Sexual Health, Latvia

Macedonian Women's Rights Center-Shelter Center, Macedonia

Novogorod Gender Center, Russia

Reproductive Health Service Center, Moldova

Women's Independent Democratic Movement of Belarus, Belarus

Women's Center, Georgia

Women's Centre for Sexuality and the Prevention, Research, and Combating of Sexual Violence - Women's Room, Croatia

Women Health and Family Planning, Ukraine

Women's Rights Center, Armenia

The East European Institute of Reproductive Health, Romania

The Legal Center for Women's Initiatives "Sana Sezim", Kazakhstan

Catholics for Choice, U.S.A.

Center for Reproductive Rights, U.S.A.

Coordination des Associations pour le Droit à l'Avortement et à la contraception, (CADAC), France

European Feminist Initiative, France

Euroregional Center for Public Initiatives, Romania

French Family Planning Movement, France

International Planned Parenthood Federation-European Network, Belgium

International Reproductive and Sexual Health Law Programme, Faculty of Law, University of Toronto

Ipas, U.S.A.

Irish Family Planning Association, Ireland

NANE-Women's Rights Association, Hungary

Patent People (People Opposing Patriarchy), Hungary

Portuguese Family Planning Association, Portugal

Safe and Legal in Ireland Abortion rights Campaign, Ireland

The Swedish Association for Sexuality Education (RFSU), Sweden

#### Individuals:

Kadieva, Milena, Lawyer, Bulgarian Gender Research Foundation-Plovdiv branch Albena Koycheva, Lawyer, Bulgaria

Marcus, Isabel, J.D., M.A., Ph.D., Professor, State University of New York/Buffalo School of Law, Director, International and Graduate Programs, U.S.A

Mulcahy, James, Rev., Metropolitan Community Churches, Rochester, NY, U.S.A.

Nakamura Stoecklin, Ursula, Switzerland

Popian, Carmen, Lawyer, Romania

Rey, Anne Marie, Abortion Information, Switzerland

Svilane, Linda, Lawyer, Latvia

Cc: Slovak National Center for Human Rights  
Public Defender of Rights

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<sup>1</sup> See World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems*, Geneva, 2003, pp. 65-66, 26, 89 [hereinafter *WHO Safe Abortion*].

<sup>2</sup> *Id.* at pp. 26 and 89.

<sup>3</sup> See *WHO Safe Abortion supra* p.90.

<sup>4</sup> See *WHO Safe Abortion supra* p.91.

<sup>5</sup> See *WHO Safe Abortion supra* pp.94, 68.

<sup>6</sup> See Parliamentary Assembly of the Council of Europe, Resolution 1607 (2008) *Access to safe and legal abortion in Europe*, paras. 7.1-7.4, available at:

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1607.htm>.

<sup>7</sup> *Tysi c v. Poland*, no. 5410/03, § 116, ECHR 2007.

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<sup>8</sup> See European Parliament resolution on sexual and reproductive health and rights (2001/2128 (INI)), point 12, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:271E:0369:0374:EN:PDF>.

<sup>9</sup> See Human Rights Committee, General Comment 28: Equality of Rights Between Men and Women (Art. 3) (68th Sess., 2000), in Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 168, ¶ 10, U.N. Doc. HRI/GEN/1/Rev.5 (2001); Committee on the Elimination of Discrimination against Women, General Recommendation 24: Women and Health, ¶¶ 14, 27, U.N. Doc. HRI/GEN/1/Rev.5 (2001); Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12) (22nd Sess., 2000), in Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 90, ¶ 21, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

<sup>10</sup> *M.S. v. Sweden*, 27 August 1997, §§ 35 and 41, *Reports* 1997-IV.