

**NGO Parallel Report on the  
Slovak Republic's 3rd Report  
on the Implementation of the  
International Covenant on Economic, Social and  
Cultural Rights**

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*Submitted to the*

*UN Committee on Economic, Social and Cultural Rights*

*for consideration in the formulation of the*

*List of Issues during the 62<sup>nd</sup> Pre-Sessional Working Group (3 –6 April 2018)*

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## SLOVAKIA – EXECUTIVE SUMMARY

This “Parallel Report” is to assist the Committee on Economic, Social and Cultural Rights in the formulation of the List of Issues during the 62<sup>nd</sup> Pre-Sessional Working Group (3 – 6 April 2018), leading to the discussion of Slovakia’s Third Periodic Reports on its implementation of the Covenant on Economic, Social and Cultural Rights during the 65<sup>th</sup> Session of the Committee on Economic, Social and Cultural Rights.

Although since accession to the European Union, in 2004, Slovakia has grown remarkably economically, it is still lagging behind most European States on key social and scientific indicators. Slovakia invests little on Research and Development and gives weak support to applied research. The main scientific research institution in Slovakia, the Slovak Academy of the Sciences (SAS), performs the bulk of basic research in the country. However, the SAS operates under the auspices of the Ministry of Education and is tightly controlled by the government, undermining freedom of research required by the Covenant. Close governmental control made it so that when controversial and highly restrictive legislature was developed regarding the use of embryonic cells for research, the SAS remained silent, stifling the input of the scientific community, and without public discourse.

Indeed, Slovakia deliberately hinders research in biotechnology and artificial reproductive technology, neglecting all bio-ethically controversial topics (e.g. induced abortion, assisted reproductive technologies, pre-implantation genetic diagnosis) to avoid irking conservative and religious sectors of the society and government.

Slovakia has an exceedingly strict policy on human Embryonic Stem Cells (hESC) research. First, Slovak laws do not define what an ‘embryo’ is, it is unclear whether the legislation applies to both embryos *in utero* (i.e., from the womb of a woman who is pregnant) as well as *in vitro*. Second, although hESC research is not prohibited *per se*, performing research on embryos is banned unless it is done the benefit of the specific embryo in question. Violations are punishable by imprisonment from one to five years, and if the offender obtains a larger unspecified “benefit for himself or another through the commission of the offence”, the punishment raises five to 12 years in prison. Moreover, Slovakia’s law against embryonic research has extraterritorial application, de facto banning international cooperation on stem cell research, in violation of the Covenant.

Access to Artificial Reproductive Technologies (ART) is allowed only “between a man and a woman” who declare that they have “an intimate physical relationship”. Slovakia’s laws block access to ART to all but men and women in “intimate” relationships, thereby blatantly discriminating against homosexual and single individuals who seek the opportunity to have offspring. The Slovak Republic’s ban of surrogacy and limiting the definition of a “mother” to the individual who carries the child is also discriminatory to women who suffer from infertility.

Finally, in Slovakia contraception is not covered by the mandatory Slovak National Health Insurance. De facto, the only forms of contraception the Slovak National Health Insurance covers are surgical irreversible sterilization and abortion. Education regarding the use of contraception is also inadequate. As a result of both the cost of contraceptives and the lack of education regarding their use, Slovakia has lower rates of contraception usage when compared with other European Union countries.

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## PURPOSE OF THE REPORT

1) The purpose of this “Parallel Report” is to assist the Committee on Economic, Social and Cultural Rights in the formulation of the List of Issues during the 62<sup>nd</sup> Pre-Sessional Working Group (3 – 6 April 2018), leading to the discussion of Slovakia’s Third Periodic Reports on its implementation of the Covenant on Economic, Social and Cultural Rights during the 65<sup>th</sup> Session of the Committee on Economic, Social and Cultural Rights.

2) The Slovak Republic ratified the Covenant on Economic, Social and Cultural Rights (hereinafter “CESCR” or “Covenant”) on 28 May 1993.<sup>1</sup> Its last periodic review (2<sup>nd</sup>) was completed in 2009. It is currently undergoing its 3<sup>rd</sup> periodic review.

3) This Report focuses on Slovakia’s compliance with Covenant obligations relating to the Right to Science, a topic which has been largely overlooked in Slovakia’s current and prior periodic reports. With the ongoing rise of technological and medical advances, allowing for safe access to, research of, and protections relating to science is an issue of great importance for Slovak citizens. This report specifically focuses on three issues: 1) Research with human Embryonic Stem Cells (hESC); 2) Assisted Reproductive Technologies (ART); and 3) Abortion and Contraception (A&C). All these three issues come under the purview of the Covenant (Articles 10, 12 and 15).

4) Slovakia’s third periodic report, submitted on June 30, 2017, has several lacunae.<sup>2</sup> Under Article 10 (“Right to Family Life”), Slovakia discusses measures implemented for family protection in terms of state social and financial benefits such as “instruments supporting employment, lower taxes for selected groups, emergency benefit, instruments supporting social inclusion (community centers, field social work), [and] instruments supporting the reconciliation of family and work life (higher maternity benefit, higher child benefit).”<sup>3</sup> Slovakia also reports on labor legislation protecting pregnant women, new mothers, and children and adolescents.<sup>4</sup> Access to Assisted Reproductive

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, art. 15(1)(b), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter CESCR]. *States Party to the International Covenant on Economic, Social and Cultural Rights*, United Nations Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en) (last visited Dec. 20, 2017).

<sup>2</sup> U.N. Economic and Social Council, *Third Periodic Reports of States Parties Due in 2017 – Slovakia*, UN Doc. E/C.12/SVK/3, (11 August 2017).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Technology (ART), abortion, issues of key significance in terms of family planning, are not mentioned. Though contraceptives are mentioned, as will be outlined below, they are merely mentioned in the context of rejecting this Committee's recommendations their concluding observations to Slovakia's 2<sup>nd</sup> periodic report.

5) Under Article 12 ("Right to Health"), the Slovak Republic's report discusses measures to improve external living conditions, disease prevention, and protection against alcohol abuse,<sup>5</sup> but does not discuss Slovakia's limitations relating to access to abortion and contraceptives, restrictions of research on human Embryonic Stem Cells (hESC), and Assisted Reproductive Technology, all issues that directly affect the right to health.

6) Of particular concern, under Article 15 ("Right to Benefit from Scientific and Technological Progress" and the "Rights of Science"), science is not mentioned at all. This section of the report focuses almost entirely on Slovakia's cultural programs, including the country's museums, the Slovak Art Council, schemes to protect the culture of Disadvantaged Groups, churches and religious communities, and the media.<sup>6</sup> While the right to partake in cultural life is certainly a key aspect of Slovakia's obligations under Article 15, it represents only half of Slovakia's obligations under this article.<sup>7</sup> As such, the exclusion of any mention relating to science is a glaring omission.

7) This report complements the Slovak Republic's report to enable the Honorable Committee to form a clearer picture of Slovakia's compliance with its obligations under Articles 10, 12, and 15 of the Covenant.

## **ABOUT THE AUTHORS OF THIS REPORT AND SOURCES**

8) This report has been prepared by Mariam Sarwar, JD Candidate 2019, under the supervision of Professor Cesare Romano and with the International Human Rights Clinic of Loyola Law School, Los Angeles – directed by Professors Cesare Romano and Mary Hansel.

9) The International Human Rights Clinic of Loyola Law School, Los Angeles is committed to achieving the full exercise of human rights by all persons, and seeks to maximize the use of

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

international and regional political, judicial, and quasi-judicial bodies through litigation, advocacy, and capacity-building.<sup>8</sup>

10) The Luca Coscioni Association for the Freedom of Scientific Research is a non-profit organization comprised of members of parliament, academics, researchers and students, along with representatives of patients and advocacy associations. The Luca Coscioni Association promotes the freedom of scientific research and treatment as well as the civil and political rights of patients and people with disabilities. It was founded in 2002 by Dr. Luca Coscioni, an Italian economist affected by Amyotrophic Lateral Sclerosis, who launched a national campaign to promote freedom of scientific research on embryonic stem cells.<sup>9</sup> Since its foundation, the Association has been active on a range of issues, including the rights of persons afflicted with illness and disabilities, the right to die, reproductive health, and freedom of scientific research.

11) The World Congress for Freedom of Scientific Research is a permanent forum of activities to promote freedom of scientific research worldwide. Since the founding session of the World Congress, in October 2004, the Luca Coscioni Association is the Operational Secretariat of the World Congress.

12) The Research and Self Determination Index is one of the main projects of the World Congress for Freedom of Scientific Research.<sup>10</sup> First published in 2014, the Index is a tool for comparative assessment of the degree to which researchers, health care professionals and patients enjoy the right to science around the globe. It measures key legal and regulatory indicators of the right to science in four areas: Assisted Reproduction Technologies (ART); research with human Embryonic Stem Cells (hESC); End-of-Life decisions; and Abortion and Contraception (A&C). For each indicator, points are allocated with highest score allotted to legal environments that recognize the right to science to the greatest degree.<sup>11</sup> Currently, 46 countries are indexed. At least 80% of data are complete for these countries. Slovakia's A&C index is complete.

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<sup>8</sup> See *International Human Rights Clinic*, Loyola Law School, Los Angeles, <http://www.lls.edu/academics/experientiallearning/clinics/socialcriminaljusticeclinics/internationalhumanrightscclinic/> (last visited 11 Dec. 2017).

<sup>9</sup> See Luca Coscioni Association, <http://www.associazionelucacoscioni.it> (last visited 11 Dec. 2017).

<sup>10</sup> See *Research and Self Determination Index*, World Congress for Freedom of Scientific Research, <http://www.freedomofresearch.org/research-and-self-determination-index> (last visited 11 Dec. 2017).

<sup>11</sup> See *id.* ("If data are not available, the answer is not included in the calculation.")



13) The Center for Reproductive Rights is a global legal advocacy organization headquartered in New York City.<sup>12</sup> The organization's mission is to “[use] the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.”<sup>13</sup> The Center monitors the treatment of reproductive rights around the world and has worked to strengthen reproductive laws and policies in over 50 different countries.<sup>14</sup> They are the only global legal advocacy organization dedicated to reproductive rights.<sup>15</sup>

14) The Health Policy Institute (“HPI”) is a private think tank in the Slovak Republic which researches health policy and health economics in Central and Eastern European countries.<sup>16</sup> HPI's mission is to “promote values which support financially sustainable health systems responding flexibly to the needs of the population; promote innovative solutions at the level of health systems... [and] promote client-oriented approach to the insured and patients.”<sup>17</sup>

## BACKGROUND

15) The Slovak Republic is a Central European nation.<sup>18</sup> Slovakia was established following the dissolution of Czechoslovakia into the Slovak Republic and the Czech Republic in 1993.<sup>19</sup> Despite initial economic struggles following the separation of the two states, financial reforms in 1998 largely strengthened the Slovakia's GDP and led to rapid economic growth.<sup>20</sup> It became member of the European Union on May 1, 2004. Slovakia now has a GDP of approximately \$170 billion, ranking as

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<sup>12</sup> *About Us*, Center for Reproductive Rights, <https://www.reproductiverights.org/about-us>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *About Us*, Health Policy Institute, <http://www.hpi.sk/en/category/about-us/>.

<sup>17</sup> *Mission*, Health Policy Institute, <http://www.hpi.sk/en/2011/05/mission/>.

<sup>18</sup> *Slovak Republic in Figures 2017*, Statistical Office of the Slovak Republic (available at:

[https://slovak.statistics.sk/wps/portal/lut/p/z1/rVHLbsIwEPwajsYbP4h9DNAGKBWiKIX4UtmOU1xIAjSF9u-bVD30IZAqdU-7q9nRzA5WeIVVqY-Ude-KvW2mVPVe5iHY9HvBxFAyIcwniTDebyQATDAy--A2QyuIYrjeDgZTAHiHlaX7--xwsqW9a5e47Qyz3qNXNmB3YvZ-o223nXg-GYOUNto6w5kZpzNcxRIQxCzAUc64waZwAgmQ5Yzy1vmnfUZTiUnnOWEI-EIRUxog6QjDHFLOWSMhxnYn05-S22dwJmK2k-oD8ggjkYsbMyLacxhHI2SOzmnFCL6CbjAKTYawrMabgheHr074aSsDkWTzuKPFkeAJ1h5U3RPtuhCNyAi7DESMC E\]bfo2bv-036uoyaQqa\\_da49U\\_h7IrkkLQN7TJb68oU-k79xINQw!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/](https://slovak.statistics.sk/wps/portal/lut/p/z1/rVHLbsIwEPwajsYbP4h9DNAGKBWiKIX4UtmOU1xIAjSF9u-bVD30IZAqdU-7q9nRzA5WeIVVqY-Ude-KvW2mVPVe5iHY9HvBxFAyIcwniTDebyQATDAy--A2QyuIYrjeDgZTAHiHlaX7--xwsqW9a5e47Qyz3qNXNmB3YvZ-o223nXg-GYOUNto6w5kZpzNcxRIQxCzAUc64waZwAgmQ5Yzy1vmnfUZTiUnnOWEI-EIRUxog6QjDHFLOWSMhxnYn05-S22dwJmK2k-oD8ggjkYsbMyLacxhHI2SOzmnFCL6CbjAKTYawrMabgheHr074aSsDkWTzuKPFkeAJ1h5U3RPtuhCNyAi7DESMC E]bfo2bv-036uoyaQqa_da49U_h7IrkkLQN7TJb68oU-k79xINQw!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/))

<sup>19</sup> *Id.*

<sup>20</sup> *Slovak Republic Country Brief*, The World Bank Group,

<http://web.worldbank.org/archive/website00978/WEB/OTHER/6A38AAB8.HTM?OpenDocument>

the 72<sup>nd</sup> highest GDP in the world (an upper-middle ranking).<sup>21</sup> Automobile and electronics exports account for more than 80% of the GDP.<sup>22</sup> Due to its recent economic successes, Slovakia is now one of the few Central and Eastern European nations that are members of Eurozone, the EU's monetary union, which it joined on January 1, 2009.<sup>23</sup>

16) Approximately 62% of Slovakia's population is Roman Catholic.<sup>24</sup> Article 24(3) of the Slovak Constitution mandates that “[c]hurches and ecclesiastical communities shall administer their own affairs themselves; in particular, they shall establish their bodies, appoint clericals, provide for theological education and establish religious orders and other clerical institutions independent from the state authorities.”<sup>25</sup> Despite this, however, the Catholic Church hierarchy exercises significant influence over the Slovakian government and its policies.<sup>26</sup> The unfortunate result is restrictive policies and a negative perception of women's reproductive rights and various forms of reproductive technology.<sup>27</sup>

17) According to the European Commission, in terms of research and innovation Slovakia does not rank well amongst European Union members.<sup>28</sup> In fact, Slovakia only ranks somewhat well in four out of the 20 indicators of the European Trend Chart's Summary Innovation Index.<sup>29</sup> According to the report, “[m]ajor weaknesses include low spending on R&D (stemming from falling public R&D support) and weak support to applied research (reflected in low commercial output of the Slovak R&D sector).”<sup>30</sup>

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<sup>21</sup> See *The World Factbook: Country Comparison GDP*, Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html#lo> (last visited Dec. 20, 2017).

<sup>22</sup> See *The World Factbook*, Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/lo.html> (last visited Dec. 20, 2017).

<sup>23</sup> *Calculated Injustice: The Slovak Republic's Failure to Ensure Access to Contraceptives*, Center for Reproductive Rights, [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/calculated\\_injustice.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/calculated_injustice.pdf) (last visited January 8, 2018).

<sup>24</sup> *Id.*

<sup>25</sup> Constitution of the Slovak Republic, Oct. 1, 1992, No. 466/1992 Coll. (available at: <https://www.prezident.sk/upload-files/46422.pdf>).

<sup>26</sup> *Calculated Injustice*, *supra* note 23, at 14.

<sup>27</sup> *Id.*

<sup>28</sup> *Private Sector Interaction in the Decision Making Processes of Public Research Policies: Slovak Republic Country Profile*, European Commission, [http://ec.europa.eu/invest-in-research/pdf/download\\_en/psi\\_countryprofile\\_slovakia.pdf](http://ec.europa.eu/invest-in-research/pdf/download_en/psi_countryprofile_slovakia.pdf) (last visited January 10, 2018).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

18) The main scientific research institution in Slovakia is the Slovak Academy of the Sciences (SAS). The SAS operates under the auspices of the Ministry of Education and “performs the bulk of basic research in Slovakia”.<sup>31</sup> The SAS consists of 69 organizations, publishes 57 scientific and professional journals, and is affiliated with 51 scientific and scholarly associations.<sup>32</sup> The SAS identifies its primary purpose as enhancing knowledge for the benefit of Slovakia and its people, through “basic research in the natural, technical, medical and social sciences as well as in the humanities in areas which are innovative, demanding in terms of personnel and research infrastructure, and which develop innovative technology and diagnostics.”<sup>33</sup> The organization actively works with universities on their research and “plays an indispensable role in the training of university students, especially in the training of doctoral students as well as experts in key and highly specialized (rare) areas which are not taught or studied at universities.”

19) Though the SAS purports to be autonomous,<sup>34</sup> the organization is inextricably tied to the Slovak government. The President of the SAS is “appointed and recalled” by the President of the Slovak Republic, the SAS is primarily funded through public finances, and the organization is established by Slovak legislature.<sup>35</sup> Accordingly, it seems likely that SAS research must fall within the purview of governmental policies and notions relating to scientific progress. As the main research institution in Slovakia, this significantly affects scientific progress in the country as a whole.

20) For example, the SAS remained largely silent when controversial and highly restrictive legislature was developed regarding the use of embryonic cells for research.<sup>36</sup> Absent any form of involvement from the country’s primary organization for scientific research, “[t]he process that culminated in restrictive legislation in Slovakia took place without the input of the scientific community, and without public discourse.”<sup>37</sup>

21) Thus, despite Slovakia’s economic successes, the state still falls short of its Covenant obligations relating to scientific access, research, and protection. Dominant and influential Catholic ideology has

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<sup>31</sup> *Id.*

<sup>32</sup> *History and Present of Slovak Academy of Sciences*, Slovak Academy of Sciences, <https://www.sav.sk/?lang=en&doc=sas-history> (last visited Jan. 8, 2018).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Benjamin J. Capps & Alastair V. Campbell, *Contested Cells: Global Perspectives on the Stem Cell Debate*, 466 (Imperial College Press 2010).

<sup>37</sup> *Id.*

resulted in governmental policies largely against many forms of reproductive technology, and these policies have proceeded mostly unquestioned by country's primary scientific research organization.

## **RESEARCH WITH HUMAN EMBRYONIC STEM CELLS (hESC)**

### **Research with human embryonic stem cells (hESC) in the Slovak Republic**

22) As noted by Benjamin J. Capps and Alastair V. Campbell in their book, 'Contested Cells: Global Perspectives on the Stem Cell Debate': "In the post-communist countries of Central and Eastern Europe, there is a general lack of modern bioethical legislation that properly addresses the fast paced progress in the field of biomedicine; and Slovakia is no exception to this group."<sup>38</sup>

23) In Slovakia, this seemed to be a conscious decision. The 2003-2004, a new Health Care Act was introduced by the then-Minister of Health, whose "intention was to put aside all bioethically controversial topics (e.g. induced abortion, assisted reproductive technologies, pre-implantation genetic diagnosis), about which he could expect a strong resistance from the Christian-Democrats (a coalition partner in the government at that time)."<sup>39</sup>

24) Slovakia has an exceedingly strict policy on hESC research. According to the Human Pluripotent Stem Cell Registry, Slovakia's legal status on stem cell research is "Very Restrictive".<sup>40</sup> Although hESC research is not prohibited *per se*, criminalization of embryonic research was 'snuck in' to Slovak legislation, within a provision on protection of individuals from abuse in biomedical research. According to the Slovak Criminal Code Section 161, entitled "Unlawful Experimentation on Humans and Human Cloning":

(1) Any person who, under the pretext of acquiring new medical knowledge, developing new methods or confirming hypotheses, or for the purpose of conducting clinical tests of pharmaceuticals, carries out the verification of new medical research findings without lawful authority,

a) although this presents immediate threat to human life or health,

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<sup>38</sup> Capps, *supra* note 36, at 444.

<sup>39</sup> *Id.* at 444-45.

<sup>40</sup> *Slovakia*, Human Pluripotent Stem Cell Registry, <https://hpscereg.eu/browse/country/sk>.

and it is not absolutely necessary to save the life of a person in a life-threatening condition, or

b) in the absence of medical indication, and without the consent of the person concerned, or performs it on persons in respect of whom it is prohibited to perform such testing without medical indication, **or performs it on a human foetus or embryo**, or performs it in contravention of other statutory requirements concerning testing conducted in the absence of medical indication, shall be liable to a term of imprisonment of one to five years.<sup>41</sup>

25) In other words, performing research on embryos is banned unless it is done the benefit of the embryo in question, and is punishable by imprisonment from one to five years. Furthermore, under Article 3, if an offender “[acts] in a more serious manner” or “obtains a larger benefit for himself or another through the commission of the offence”, the researcher is liable for five to 12 years in prison.<sup>42</sup> Exactly what constitutes a ‘benefit’ is not addressed.<sup>43</sup>

26) Section 161 more explicitly bans human cloning under any circumstances, stating: “The offender shall be liable to a term of imprisonment of three to eight years if he performs any intervention seeking to create a human being genetically identical to other human being at any stage of development, whether living or dead.”<sup>44</sup> Likewise, research on fetuses is banned in the Slovak Health Care Act Section 26 (“Biomedical Research”).<sup>45</sup>

27) The Health Care Act also mandates that biomedical research must be monitored by an Ethics Committee to evaluate its “Ethical Acceptance”.<sup>46</sup>

28) Of particular concern, however, is that Slovakia’s law against embryonic research has extraterritorial application. This means that international cooperation on stem cell research is

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<sup>41</sup> Trestny Zakon (*Criminal Code*) Section 161 Art. I (Slovakia), available in English at: <http://www.legislationline.org/documents/section/criminal-code> (emphasis added).

<sup>42</sup> *Id.* at Section 161, Art. III.

<sup>43</sup> Capps, *supra* note 36, at 448.

<sup>44</sup> Trestny Zakon (*Criminal Code*), *supra* note 41, at Section 161, Art. II.

<sup>45</sup> Zakon o zdravotnej starostlivosti c.576/2004 Z.z (*The Health Care Law No. 576/2004 Coll.*) Section 26, Art. 10, available in English at: <https://translate.google.com/translate?hl=en&sl=sk&u=http://www.zakonypreludi.sk/zz/2004-576&prev=search>

<sup>46</sup> *Id.* at Section 28.

banned, and “each Slovak citizen or each foreigner with permanent residence within the territory of Slovakia can be prosecuted for the violation...even on the territory of another state, where such actions are not considered illegal.”<sup>47</sup>

29) A literal reading of the law reveals numerous ambiguities. The law does not discuss specific aspects of embryonic research. It is also unclear whether procuring an embryo is banned, if the law applies to embryos gathered before the law was enacted, or whether the law applies to embryos received from abroad.<sup>48</sup> As a result, “[s]ince at the present there is general concern about the possible free interpretation of these legislatively undefined biomedical terms by Slovak courts, Slovak scientists are afraid they might break the law, and therefore refrain from performing any hESC research.”<sup>49</sup>

30) Additionally, because the law does not define what an ‘embryo’ is, it is unclear whether the legislation applies to both embryos *in utero* (i.e., from the womb of a woman who is pregnant) as well as *in vitro*. Indeed, the vast majority of stem cells used in research come from *in vitro* embryos that were developed via IVF (*In Vitro Fertilization*), specifically surplus embryos or embryos that are not viable enough to lead to pregnancy and that were donated to research with the consent of the donor(s).<sup>50</sup>

31) However, the position of the government of Slovakia on the point is clear. In 2003, at the initiative of the Christian-Democratic Minister of Education, the Slovak government released an official statement disagreeing with the EU’s proposal to fund hESC research within its Sixth Framework Programme, stating that, hESC, including the procurement of stem cells from any embryos, goes against Slovak legislation.<sup>51</sup> Slovakia argued this is required by the ‘Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine’ (the “Oviedo Convention”), to which it is party, even though the Oviedo Convention only explicitly bans the creation of embryos for biomedical research.<sup>52</sup>

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<sup>47</sup> Capps, *supra* note 36, at 451.

<sup>48</sup> *Id.* at 448-49.

<sup>49</sup> *Id.* at 449.

<sup>50</sup> Kerstin Bjuresten & Outi Hovatta, *Donation of Embryos for Stem Cell Research — How Many Couples Consent?*, 18 Hum. Reprod. 6, 1353-1355 (2003), <https://academic.oup.com/humrep/article/18/6/1353/2913611/Donation-of-embryos-for-stem-cell-research-how>

<sup>51</sup> *Id.* at 447.

<sup>52</sup> *Id.*

32) The Slovak government's subsequent actions have further entrenched the staunch opposition to hESC research. In 2005, Slovakia joined Germany, Austria, Poland, Malta and Italy in signing a "Declaration of Ethics," penned by former Italian Prime Minister Berlusconi, which petitioned the EU to cancel their plans to fund embryonic research. Slovakia also voted against hESC research at the European Council, and called for a universal ban on the European funding of embryonic research in both the Sixth and Seventh Framework Programme.<sup>53</sup> This still seems to be the position of the Slovak government.

33) The excessive and arbitrary protection that Slovakia gives to human embryos prevents research in stem cells, as well. Indeed, human embryos are the main and most efficient source of stem cells.<sup>54</sup> Stem cell research is widely lauded and is "believed to represent one of the greatest promises for medicine and biomedical research in the coming century with hopes raised for treatments for common diseases and conditions, including neurological disease or injury, diabetes, and myocardial infarct."<sup>55</sup> Research on human stem cells is believed to be the key to cure many diseases that cause suffering and eventually kill millions each year.<sup>56</sup>

34) Until recently, scientists primarily worked with two kinds of stem cells: embryonic stem cells (i.e. stem cells produced from embryos) and non-embryonic "somatic" or "adult" stem cells.<sup>57</sup> An "adult stem cell" is an "[u]ndifferentiated cell, found among differentiated cells in a tissue or organ. The adult stem cell can renew itself and can differentiate to yield some or all of the major specialized cell types of the tissue or organ. The primary roles of adult stem cells in a living organism are to maintain and repair the tissue in which they are found."<sup>58</sup> These type of stem cells can be found in many organs and tissues, including the brain, bone marrow, peripheral blood, blood vessels, skeletal muscle, skin, teeth, heart, gut, liver, ovarian epithelium, and testis.<sup>59</sup> Typically, however, the number of adult stem cells in each tissue is very small.<sup>60</sup> Additionally, their capacity to divide is limited once

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<sup>53</sup> *Id.* at 448.

<sup>54</sup> John Harris, *It's time to Extend the 14-day Limit for Embryo Research*, *The Guardian* (May 6, 2016), <https://www.theguardian.com/commentisfree/2016/may/06/extend-14-day-limit-embryo-research> (last visited Mar. 7, 2017).

<sup>55</sup> K. Devoder, *What's in a Name? Embryos, entities, and ANTIities in the Stem Cell Debate*, 32 *Journal of Medical Ethics* 43-48 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563266/>

<sup>56</sup> *Stem Cells Basics I*, National Institute of Health (2016), <https://stemcells.nih.gov/info/basics/1.htm> (last visited Mar. 7, 2017).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

removed from the body, thereby making the generation of large quantities of stem cells difficult.<sup>61</sup>

35) “Embryonic stem cells,” on the other hand, as their name suggests derive from embryos. They are “formed during the blastocyst phase of embryological development.”<sup>62</sup> It must be stressed: stem cells used for research do *not* come from eggs fertilized that have been transferred in a woman's body.<sup>63</sup> The vast majority of stem cells used in research come from embryos that were developed via IVF, and then were donated to research with the informed consent of the donor(s).<sup>64</sup> Research on stem cell lines derived from human embryos is significantly more efficient and faster than research from adult stem cells.<sup>65</sup>

36) Given their unique regenerative abilities, stem cells offer new potentials for treating diseases such as Alzheimer's, Parkinson's diseases as well as diabetes, and heart disease.<sup>66</sup> That being said, “much work still remains to be done in the laboratory and the clinic to understand how to use these cells for cell-based therapies to treat disease, which is also referred to as regenerative or reparative medicine.”<sup>67</sup> The study of stem cells conducted in laboratories already enables “scientists to learn about the cells' essential properties and what makes them different from specialized cell types.”<sup>68</sup> Scientists are already using stem cells in the laboratory to screen new drugs and to develop model systems to study normal growth and identify the causes of birth defects.<sup>69</sup> In addition, stem cells studies continue to advance our knowledge about how an organism develops from a single cell and how healthy cells replace damaged cells in adult organisms.<sup>70</sup> In sum, stem cell research is one of the most fascinating areas of contemporary biology.

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<sup>61</sup> *Id.*

<sup>62</sup> Harris, *supra* note 54.

<sup>63</sup> Stem Cell Basics I, *supra* note 56.

<sup>64</sup> Kerstin Bjuresten & Outi Hovatta, “Donation of Embryos for Stem Cell Research — How Many Couples Consent?”, 18 *Hum. Reprod.* 6, 1353-1355, 2003, <https://academic.oup.com/humrep/article/18/6/1353/2913611/Donation-of-embryos-for-stem-cell-research-how> (site last visited 7 March 2017).

<sup>65</sup> Harris, *supra* note 54.

<sup>66</sup> Stem Cell Basics I, *supra* note 56.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*



## Analysis: Research with human embryonic stem cells (hESC) under the Covenant

37) There is no way to reconcile Slovakia's extreme laws against hESC with the nation's international obligations.

38) Article 15(1) of the Covenant mandates that all States which are party to CESCR must recognize the right of everyone "to take part in cultural life; to enjoy the benefits of scientific progress and its applications; and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."<sup>71</sup> The benefits of scientific progress include access to health, medicine, technology, education and training.<sup>72</sup> An outright ban on extremely viable and promising stem cell research directly contravenes this duty.

39) The 2009 "Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications" ("Venice Statement") adopted by UNESCO further elucidates the importance of the right to science and how states must discharge their obligations to allow for scientific advancement. The statement was penned by a group of experts and representatives of intergovernmental organizations and bodies (OHCHR, WIP, WTO, and EU), three members of the Committee on Economic, Social and Cultural Rights, and the UN Special Rapporteur on the right to food as well as representatives of UNESCO Chairs and non-governmental organizations.<sup>73</sup> According to the *Venice Statement*, States maintain, under the Covenant, a duty "to respect the freedoms indispensable for scientific research and creative activity, such as the freedom of thought, to hold opinions without interference, and to seek, receive, and impart information and ideas of all kinds."<sup>74</sup>

40) Under Article 16 of the Venice Statement, States have a duty to fulfill and "adopt a legal and policy framework and to establish institutions to promote the development and diffusion of science and technology in a manner consistent with fundamental human rights...to promote access to the

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<sup>71</sup> International Covenant on the Economic, Social and Cultural Rights. Art. 15.

<http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> (last visited 12 Dec. 2017).

<sup>72</sup> AAAS Science and Human Rights Coalition, *Defining the Right to Enjoy the Benefits of Scientific Progress and Its Applications: American Scientists' Perspectives* (Report prepared by Margaret Weigers Vitullo and Jessica Wyndham), DOI: 10.1126/srhl.aaa0028, (October 2013), [https://www.aaas.org/sites/default/files/content\\_files/UNReportAAAS.pdf](https://www.aaas.org/sites/default/files/content_files/UNReportAAAS.pdf) (last visited 12 Dec. 2017).

<sup>73</sup> UNESCO, *Venice Statement: The Right to Enjoy the Benefits of Scientific Progress and its Applications*, ¶ 14 (Jul. 16-17, 2009), <http://unesdoc.unesco.org/images/0018/001855/185558e.pdf>. (last visited 14 Dec. 2017).

<sup>74</sup> *Id.* at 17.

benefits of science and its applications on a non-discriminatory basis including measures necessary to address the needs of disadvantaged and marginalized groups.”<sup>75</sup>

41) Article 15(2) of the Venice Statement mandates that “[t]he steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.” This general obligation implicitly contains several more specific obligations: first, “conservation of science includes retaining scientific discoveries as well as the data behind them, which must be preserved in a form that allows replication of those discoveries;”<sup>76</sup> second, “development demands an explicit commitment to the development of science and technology for human benefit;”<sup>77</sup> and third, “diffusion encompasses the dissemination of scientific knowledge and application both within the scientific community and in society at large.”<sup>78</sup>

42) Article 15(3) states “[t]he States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.”<sup>79</sup> Special Rapporteur Farida Shaheed emphasized that “[f]reedom of scientific research means ensuring that the scientific enterprise remains free of political and other interference, while guaranteeing the highest standards of ethical safeguards by scientific professions.”<sup>80</sup>

43) Furthermore, in her *Report of the Special Rapporteur in the field of cultural rights*, Farida Shaheed identified four general obligations under “the right to enjoy the benefits of scientific progress and its applications.” (1) access to the benefits of science by everyone, without discrimination; (2) opportunities for all to contribute to the scientific enterprise and freedom indispensable for scientific research; (3) participation of individuals and communities in decision-making; and (4) an enabling environment fostering the conservation, development and diffusion of science and technology.<sup>81</sup>

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<sup>75</sup> *Id.* at 5.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 4.

<sup>78</sup> *Id.* at 5.

<sup>79</sup> International Convention on Economic, Social and Cultural Rights. Art. 15. para. 3.

<sup>80</sup> Farida Shaheed (Special Rapporteur on Cultural Rights), *The Right to Enjoy the Benefits of Scientific Progress and Its Applications*, U.N. Doc. A/HRC/20/26, (May 14, 2012), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-26\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-26_en.pdf). (last visited 14 Dec. 2017).

<sup>81</sup> *Id.*

44) In the Slovak Republic, there is insufficient freedom to conduct scientific research and opportunity to contribute to the scientific enterprise. Both the Health Care Act, which bans research on fetuses, and Section 161 of the Slovak Criminal Code, which bans cloning and research on embryos, violate the Slovak Republic's obligations under Article 15(1) of the Covenant. An outright ban on valuable research clearly infringes each Slovak resident's right to "enjoy the benefits of scientific progress and its applications".<sup>82</sup> In particular, researchers are impeded from being able to conduct valuable research on hESC. The Slovak government's legislation has undermined the rights of the public to participate in policy and decision-making, and created an environment not conducive to foster to development and diffusion of science. Slovakia's policy against hESC violates the Covenant as well as the Venice Statement.

## **ASSISTED REPRODUCTIVE TECHNOLOGIES (ART)**

### **ART in the Slovak Republic**

45) Generally, the term Assisted Reproductive Technologies (ART) indicates processes in which embryos or gametes are manipulated outside of the body to create a viable zygote with the ultimate aim to lead to pregnancy.<sup>83</sup> One of the most common forms of ART is In Vitro Fertilization (IVF), a process by which sperm and egg are combined in a laboratory, in a controlled environment, in a vial. Once fertilized, the pre-embryos are then implanted into a woman's body with the goal of achieving pregnancy.<sup>84</sup>

46) In the past four decades, an estimated five million babies have been born worldwide with the help of ART.<sup>85</sup> Since many European countries have low fertility rates, Europe has the largest number of births thanks to Assisted Reproduction Technologies (ART) treatments globally.<sup>86</sup> However, this is not the case of Slovakia. IVF, Intra-Cytoplasmic Sperm Injection (ISCI),<sup>87</sup> and In

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<sup>82</sup> International Covenant on the Economic, Social and Cultural Rights. Art. 15.

<http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> (last visited 12 Dec. 2017).

<sup>83</sup> Patrick Präg and Melinda C. Mills, *Assisted Reproductive Technology in Europe: Usage and Regulation in the Context of Cross-Border Reproductive Care*, Childlessness in Europe: Contexts, Causes, and Consequences, Demographic Research Monographs, DOI 10.1007/978-3-319-44667-7\_14, 289-309, (2017)

[https://link.springer.com/content/pdf/10.1007%2F978-3-319-44667-7\\_14.pdf](https://link.springer.com/content/pdf/10.1007%2F978-3-319-44667-7_14.pdf) (last visited 11 Dec. 2017).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 289.

<sup>86</sup> *Id.* at 290-291.

<sup>87</sup> Intracytoplasmic sperm injection (ISCI) is when a single sperm cell is injected into a mature egg, which is then implanted into the intended woman. Patrick Präg & Melinda C. Mills, *Assisted Reproductive Technology in Europe. Usage and*

Vitro Maturation (Oocyte Maturation)<sup>88</sup> are allowed under Slovak law.<sup>89</sup> However, in Slovakia, there are only about 6 centers which provide forms of assisted reproductive technologies to patients seeking pregnancy,<sup>90</sup> and very few ART procedures are performed in the country annually.<sup>91</sup> In 2004, for example, only 0.3% of births were due to ART.<sup>92</sup> In contrast, in 2006 4.1% of births in Denmark were due to ART, as well as 3.6% of births in Slovenia, 3.3% of births in Belgium, and 2.4% of births in the Netherlands, and 1.4% of births in 2005 in Bulgaria.<sup>93</sup> Relative to many other European nations, the Slovak Republic has been slower to make Artificial Reproduction Technologies (ART) available to its citizens.<sup>94</sup> Though Slovak law allows for certain forms of ART, excessively restrictive policies govern these procedures.<sup>95</sup>

47) Under Government Regulation 20/2007, resort to ART is allowed only “between a man and a woman” who declare that they have “an intimate physical relationship”.<sup>96</sup> In other words, homosexual couples, as well as single women, cannot resort to ART if they want conceive a biological child.

48) Heterologous fertilization (i.e. fertilization with donation of sperm other than the partner’s) is permitted as long as the donor completes a blood test.<sup>97</sup> Oocyte donation is permitted, but “[o]nly people whose ovaries do not produce any eggs or whose eggs cannot be used to attain healthy pregnancy can apply for [donated eggs].”<sup>98</sup> Donors are selected “on the basis of age, health and medical history information provided in the questionnaire and through a personal interview with a qualified and trained healthcare professional.”<sup>99</sup>

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*Regulation in the Context of Cross-Border Reproductive Care*, European Union Seventh Framework Programme Families and Societies working paper series (2015), <http://www.familiesandsocieties.eu/wp-content/uploads/2015/09/WP43PragMills2015.pdf>.

<sup>88</sup> In Vitro maturation (also known as oocyte maturation) is an alternative collection strategy entailing the collection of immature eggs from a woman that are then matured in a lab. [REF]

<sup>89</sup> Slavica Karajčić, *Policy on Assisted Reproduction in Slovakia*, Health Policy Institute (2013), [http://www.hpi.sk/cdata/Publications/HPI\\_Policy\\_on\\_Assited\\_Reproduction\\_in\\_Slovakia\\_2013\\_Eng.pdf](http://www.hpi.sk/cdata/Publications/HPI_Policy_on_Assited_Reproduction_in_Slovakia_2013_Eng.pdf)

<sup>90</sup> Joseph G. Schenker, *Ethical Dilemmas in Assisted Reproductive Technologies* (Walter de Gruyter GmbH & Co. KG 2011).

<sup>91</sup> Karajčić, *supra* note 89.

<sup>92</sup> *Id.*

<sup>93</sup> Bojana Pinter et. al, *Assisted reproductive technologies in European Union: Findings of the Reproductive Health Report*, [https://webgate.ec.europa.eu/chafea\\_pdb/assets/files/pdb/2007110/2007110\\_d12-01\\_en\\_ps.pdf](https://webgate.ec.europa.eu/chafea_pdb/assets/files/pdb/2007110/2007110_d12-01_en_ps.pdf)

<sup>94</sup> Michaela Potančoková et. al, *Slovakia: Fertility Between Tradition and Modernity*, 19 Demographic Research 973-1018 (2008).

<sup>95</sup> Karajčić, *supra* note 89.

<sup>96</sup> Nariadenie vlády č 20/2007 Z.z. (*Government Regulation 20/2007 Coll.*) Section 2(b)

<sup>97</sup> *Id.* at Section 12(2).

<sup>98</sup> Karajčić, *supra* note 89.

<sup>99</sup> Nariadenie vlády č 20/2007 Z.z. (*Government Regulation 20/2007 Coll.*) Section 8(4).

49) Couples who undergo IVF and ICSI treatments are eligible to receive partial reimbursement through the Slovak national health care.<sup>100</sup> 75% of the laboratory phase and drugs for both procedures are reimbursed, while 100% of the consultations, blood tests, and echographies are reimbursed.<sup>101</sup> Up to three cycles of IVF are covered. During embryo transplant, the doctor makes the final decision as to how many embryos should be implanted into the woman based on her age, health conditions, and personal preference.<sup>102</sup>

50) Surrogacy is a method and agreement whereby a woman agrees to carry a pregnancy for another person or persons, who will become the newborn child's parent after birth.<sup>103</sup> Intended parents may seek a surrogacy arrangement when pregnancy is medically impossible, pregnancy risks present an unacceptable danger to the mother's health, or a man or male couple wish to have a biological child.

51) Typically, surrogacy involves the sperm from the intended father being artificially inseminated in the egg of the intended surrogate, thus rendering the surrogate the biological mother of the intended child.<sup>104</sup> In a gestational surrogacy, a fertilized egg is implanted into a surrogate via IVF. In such cases, the surrogate is not biologically related to the intended baby and instead only provides the gestational component of the pregnancy (i.e., the uterus).<sup>105</sup>

52) Despite the hope that surrogacy can give couples who cannot naturally bear children, all forms of surrogacy is banned under Slovak legislation under the Family Act.<sup>106</sup> The Family Act was enacted in 2005 without the benefit of discussions and input from the professional and general public, thereby depriving the Slovak people from the opportunity to contest the ban.<sup>107</sup> Section 82 of the Slovak Family Act explicitly states that “(1) the mother of the child is the woman who gave birth to

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<sup>100</sup> Karajičić, *supra* note 89.

<sup>101</sup> *Comparative Analysis of Medically Assisted Reproduction in the EU: Regulation and Technologies*, European Society of Human Reproduction and Embryology report for the European Commission, [https://ec.europa.eu/health/sites/health/files/blood\\_tissues\\_organs/docs/study\\_eshre\\_en.pdf](https://ec.europa.eu/health/sites/health/files/blood_tissues_organs/docs/study_eshre_en.pdf)

<sup>102</sup> Karajičić, *supra* note 89.

<sup>103</sup> Karen L. Goldstein & Caryn H. Okinaga, *Assisted Reproductive Technology*, 3 *The Georgetown Journal of Gender and the Law* (2002).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Karajičić, *supra* note 89.

<sup>107</sup> *Id.*

the child”, and that “(2) Agreements and contracts which are contrary to paragraph 1 shall be null and void.”<sup>108</sup>

### **Analysis: ART under the Covenant**

53) Equal access to ART falls squarely under Slovakia’s obligations within the laws of the Covenant. Article 10 of the Covenant decrees that “[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment.”<sup>109</sup> ART often represents the only means through which individuals or couples can achieve pregnancy.<sup>110</sup> If Slovakia is to truly fulfill their duties under the Covenant, then they must ensure the widest possible assistance to helping all Slovak residents establish a family.

54) Furthermore, under Article 12 of the Covenant, States must “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health... The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases”<sup>111</sup> As the World Health Organization (“WHO”) defines infertility as “a disease of the reproductive system”,<sup>112</sup> easier and less discriminatory access to ART is a means through which Slovakia can fulfill their duty to ensure the health of its people.

55) Additionally, according to this Committee’s General Comment No. 14 (2000), the right to health incorporates “[t]he right to control one’s health and body, including sexual and reproductive freedom...[and] the right to a system of health protection which provides equality of opportunity

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<sup>108</sup> Zákon o rodine 36/2005 Z.z. (*The Family Act 36/2005 Coll.*) Section 82, Art.s 1-2.

<sup>109</sup> International Covenant on Economic, Social and Cultural Rights, Art. 10(1), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter CESCR]. *States Party to the International Covenant on Economic, Social and Cultural Rights*, United Nations Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en). (last visited 14 Dec. 2017)(emphasis added).

<sup>110</sup> Karajičić, *supra* note 89.

<sup>111</sup> International Covenant on Economic, Social and Cultural Rights, Art. 12(1-2), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter CESCR]. *States Party to the International Covenant on Economic, Social and Cultural Rights*, United Nations Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en). (last visited 14 Dec. 2017)(emphasis added).

<sup>112</sup> WHO Infertility Definitions and Terminology, *Sexual and Reproductive Health: Infertility definitions and terminology*, <http://www.who.int/reproductivehealth/topics/infertility/definitions/en/> (last visited 14 Dec. 2017)

for people to enjoy the highest attainable level of health.”<sup>113</sup> “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.”<sup>114</sup>

56) According to Special Rapporteur Farida Shaheed, the Right to Health under Article 12 and the Right to Science under Article 15 must be enjoyed by everyone, without discrimination.<sup>115</sup> As such, in order to fulfill their Covenant obligations, States should undertake the necessary means to ensure that all of their residents have equal access to the scientific and health benefits of new medicines and technologies. This would include ART. ART designates medical techniques within the scientific field of “reproductive endocrinology,”<sup>116</sup> and, accordingly, falls under the definitions set forth in the Venice Statement and in the Special Rapporteur on Cultural Rights’ 2012 Report as “science” and a “benefit of scientific progress.”<sup>117</sup>

57) Additionally, the Venice Statement holds that a State’s duty to fulfill the right to science includes “adopt a legal and policy framework and to establish institutions to promote the development and diffusion of science and technology...[and] to promote access to the benefits of science and its

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<sup>113</sup> United Nations Committee on Economic, Social, and Cultural Rights, General Comment No. 14, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: The Right to the Highest Attainable Standard of Health* at ¶ 8, Doc. E/C. 12/2000/4 (Aug. 11, 2000).

<sup>114</sup> *Id.* at 20, ¶ 14, n. 12.

<sup>115</sup> Farida Shaheed (Special Rapporteur on Cultural Rights), *The Right to Enjoy the Benefits of Scientific Progress and Its Applications*, U.N. Doc. A/HRC/20/26, para. 24, (May 14, 2012), (explaining that the term “science” as used in the ICESCR is “knowledge that is testable and refutable, in all fields of inquiry . . . and encompassing all research”; and elaborating that “[t]he ‘benefits’ of science encompass not only scientific results and outcomes but also the scientific process, its methodologies and tools.”), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-26\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-26_en.pdf). (last visited 14 Dec. 2017).

<sup>116</sup> *Reproductive Medicine Associates of Connecticut: What is a Reproductive Endocrinologist?*, <http://www.rmact.com/our-fertility-doctors/what-is-a-reproductive-endocrinologist> (last visited Jan. 23, 2015).

<sup>117</sup> The U.N. Special Rapporteur on Cultural Rights stated in her 2012 Report on the Right to Enjoy the Benefits of Scientific Progress that the term “science” as used in the ICESCR is “knowledge that is testable and refutable, in all fields of inquiry . . . and encompassing all research.” *Id.*, ¶ 24. She elaborated that “[t]he ‘benefits’ of science encompass not only scientific results and outcomes but also the scientific process, its methodologies and tools.” *Id.* Consistent with the Special Rapporteur’s definition, the Venice Statement says that the right to benefit from scientific research is “applicable to all fields of science and its applications.” UNESCO, *Venice Statement: The Right to Enjoy the Benefits of Scientific Progress and its Applications*, Section12(a) (Jul. 16-7, 2009).

applications on a non-discriminatory basis including measures necessary to address the needs of disadvantaged and marginalized groups.”<sup>118</sup>

58) Here, Slovakia has undermined this duty under the Covenant. ART often is the only means through which infertile individuals or couples can achieve pregnancy.<sup>119</sup> Under Government Regulation 20/2007, resort to ART is allowed only “between a man and a woman” who declare that they have “an intimate physical relationship”.<sup>120</sup> Slovakia’s laws block access to ART to all but men and women in “intimate” relationships, thereby blatantly discriminating against homosexual and single individuals who seek the opportunity to have offspring.<sup>121</sup>

59) The Slovak Republic’s law banning surrogacy and limiting the definition of a “mother” to the individual who carries the child<sup>122</sup> is also discriminatory to women who suffer from infertility. Section 82 of the Slovak Family Act reads that “(1) the mother of the child is the woman who gave birth to the child”, and “(2) Agreements and contracts which are contrary to paragraph 1 shall be null and void.”<sup>123</sup> 49) Unfortunately, “[t]he aforementioned provision does not take into consideration medical methods of assisted reproduction (e.g. surrogacy in cases when a woman is not able, due to health problems, to carry the fetus). At the same time, the provision discriminates against women who cannot get pregnant in a natural way.”<sup>124</sup> Furthermore, to ensure everyone has truly access to “safe, effective, affordable and acceptable methods of family planning of their choice”<sup>125</sup>, surrogacy should be a freely available means of achieving pregnancy for anyone who seeks it.

60) In the *Artavia Murillo* case, the Inter-American Court of Human Rights determined that the right to enjoy the benefits of scientific progress (found in Article 14.1.b of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (“Protocol of San Salvador”)), includes accessing medical technology necessary to exercise the right

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<sup>118</sup> UNESCO, *Venice Statement: The Right to Enjoy the Benefits of Scientific Progress and its Applications*, ¶ 16 (Jul. 16-17, 2009), <http://unesdoc.unesco.org/images/0018/001855/185558e.pdf>. (last visited 14 Dec. 2017).

<sup>119</sup> Karajičić, *supra* note 89.

<sup>120</sup> Nariadenie vlády č 20/2007 Z.z. (*Government Regulation 20/2007 Coll.*) Section 2(b)

<sup>121</sup> *Id.*

<sup>122</sup> Zákon o rodine 36/2005 Z.z. (*The Family Act 36/2005 Coll.*) Section 82, Art.s 1-2.

<sup>123</sup> *Id.*

<sup>124</sup> Karajičić, *supra* note 89.

<sup>125</sup> United Nations Committee on Economic, Social, and Cultural Rights, General Comment No. 14, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: The Right to the Highest Attainable Standard of Health* at 20, ¶ 14, n. 12, Doc. E/C. 12/2000/4 (Aug. 11, 2000).



to private life and reproductive freedom to found a family.<sup>126</sup> This requires access to the best healthcare including assisted reproductive techniques, and prohibits any arbitrary or disproportionate restrictions on accessing this technology.<sup>127</sup> In that case, the Inter-American Court held that that “reproductive autonomy and access to reproductive health services . . . includes the right to have access to the medical technology necessary to exercise this right.”<sup>128</sup>

## **ABORTION AND CONTRACEPTION (A&C)**

### **Abortion and Contraception in the Slovak Republic**

61) With regards to abortion and contraception, the Slovak Republic scores a disappointing 50 out of 72 points on the Research and Self-Determination Index, placing the nation at 54<sup>th</sup> of the 194 countries surveyed.<sup>129</sup>

#### *Contraception*

62) Slovakia’s policies on contraception are unsatisfactory at best, and probably a violation of its obligations under the Covenant. Contraception is not covered by the mandatory Slovak National Health Insurance.<sup>130</sup> This falls behind standards in the rest of Europe, where 18 out of 27 member states have agreed to fully or partially cover contraceptives within their national health insurance plan.<sup>131</sup> Women who want to use contraceptives, such as the pill, patches, vaginal rings, and injected/implanted contraceptives, must visit a gynecologist and obtain a prescription.<sup>132</sup> They can visit a gynecologist without referral from their primary care physician,<sup>133</sup> but they must pay for all

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<sup>126</sup> *Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 28, 2012, I/A Court H.R., Series C No. 257 (2012), ¶ 146.

<sup>127</sup> *Id.*, ¶¶ 287-284.

<sup>128</sup> *Id.* at ¶ 146.

<sup>129</sup> World Congress for Freedom of Scientific Research, *Abortion*, Research and Self-Determination Index, (<http://www.freedomofresearch.org/issue/abortion?page=1>) (last visited 14 Dec. 2017).

<sup>130</sup> *Calculated Injustice*, *supra* note 23, at 9.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

hormonal contraceptives out of pocket.<sup>134</sup> Emergency contraception is available over-the-counter in the Slovak Republic<sup>135</sup>, but is not covered by health insurance either.<sup>136</sup>

63) Thus, de facto, the only forms of contraception the Slovak National Health Insurance covers are surgical irreversible sterilization, which is “permanent and irreversible and covered only when there are health indications,”<sup>137</sup> and abortion.<sup>138</sup> Unsurprisingly, these are the contraceptive methods of choice of low-income women, who cannot afford to pay out of pocket for hormonal or emergency contraceptives.

64) Education regarding the use of contraception is also inadequate. According to a report by the Center for Reproductive Rights, “Slovakia has also failed to provide women and adolescents with access to comprehensive and reliable information on contraceptives, which also limits women’s and adolescent girls’ ability to make free and responsible decisions regarding their fertility. This is in large part because sexuality education in schools, if provided at all, is often inadequate, focusing only on anatomy or influenced by religious views. The absence of sexuality-related discussions in the home and a lack of information provided by gynecologists are other barriers that further impede access.”<sup>139</sup> Additionally, contraceptive counseling is also not included as part of the annual gynecological examination covered by Slovak health insurance.<sup>140</sup>

65) As a result of both the cost of contraceptives and the lack of education regarding their use, Slovakia has lower rates of contraception usage when compared with other European Union countries. While only 22.8% of women within reproductive age reported using contraceptives in Slovakia, 47.4% of women reported usage of hormonal contraceptives in the Czech Republic, 43.8% of women reported usage of the pill in France, and over 50% of women reported usage of the pill in Germany.<sup>141</sup>

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<sup>134</sup> *Id.* at 19-20.

<sup>135</sup> *Access to Emergency Contraceptives in the European Union Countries*, European Consortium for Emergency Contraception (2014) <http://www.ec-ec.org/custom-content/uploads/2014/11/Access-to-EC-in-EU-countries.-ECECOct2014.pdf> (last visited Jan. 10, 2018).

<sup>136</sup> *Calculated Injustice*, *supra* note 23.

<sup>137</sup> *Id.* at 20.

<sup>138</sup> *The Health Care Law No. 576/2004 Coll.*, *supra* note 45, at Section 40.

<sup>139</sup> *Calculated Injustice*, *supra* note 23, at 14.

<sup>140</sup> *Id.* at 19.

<sup>141</sup> *Id.* at 20.

## *Abortion*

66) Because contraception is not as available as it should be, abortion seems to be the preferred method of birth control in Slovakia. Indeed, abortion is 100% covered by the mandatory Slovak Health Insurance,<sup>142</sup> while contraceptives are not.<sup>143</sup> In fact, because of the relatively ease of access and cheap price of the procedure, citizens from other countries have taken to travelling to Slovakia to receive abortions.<sup>144</sup>

67) Abortion was first fully legalized in the Slovak Republic in 1986.<sup>145</sup> The Law of the Slovak National Council on the Artificial Interruption of Pregnancy Act. No. 73/1986, the current law regulating abortion (*Zákon Slovenskej národnej rady o umelom prerušení tehotenstva Zákon č. 73/1986 Zb.*), states: “A pregnancy shall be artificially terminated if the woman makes a written request to this effect, the pregnancy has not passed the twelfth week, and there are no contraindications on health grounds.”<sup>146</sup> Additionally, “[a] pregnancy may be artificially terminated on health grounds with the woman’s consent, or at her instigation, if her life or health or the healthy development of the fetus are endangered, or if fetal development manifests genetic anomalies.”<sup>147</sup>

68) For girls under the age of 16, abortions may only be performed with the consent of their legal guardian.<sup>148</sup> A much-debated change of legislation, approved in 2009,<sup>149</sup> added that “[i]f artificial

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<sup>142</sup> The Law of the National Council of the Slovak Republic of 9 March 1995 on the Health Regulations 98/1995 Coll. Section 34(a), available in English at: [https://translate.googleusercontent.com/translate\\_c?depth=1&hl=en&prev=search&rurl=translate.google.com&sl=sk&sp=nmt4&u=https://www.noveaspi.sk/products/lawText/1/43029/1/2&usg=ALkJrhjCILUSg7yGy3cETIdgDLMeGpwXrg](https://translate.googleusercontent.com/translate_c?depth=1&hl=en&prev=search&rurl=translate.google.com&sl=sk&sp=nmt4&u=https://www.noveaspi.sk/products/lawText/1/43029/1/2&usg=ALkJrhjCILUSg7yGy3cETIdgDLMeGpwXrg) (last visited Jan. 11, 2018).

<sup>143</sup> *Population Policy Data Bank: Slovakia Abortion Policy*, Population Division of the Department of Economic and Social Affairs of the United Nations. See also Potančoková et. al, *supra* note 94 (“Until the 1990s, availability of various forms of contraception was limited and contraceptive use remained low. In this period, induced abortions largely substituted for contraception and became an integral part of the reproductive behavior of the Slovak population”).

<sup>144</sup> *Polish Women Travel to Slovakia for Abortions*, The Slovak Spectator, <https://spectator.sme.sk/c/20155425/polish-women-travel-to-slovakia-for-abortions.html>

<sup>145</sup> *Slovakia Abortion Policy*, *supra* note 143.

<sup>146</sup> *Zákon Slovenskej národnej rady o umelom prerušení tehotenstva Zákon č. 73/1986 Zb. (Law of the Slovak National Council on the Artificial Interruption of Pregnancy Act. No. 73/1986)* Section 4 English translation available at: <https://cyber.harvard.edu/population/abortion/Slovakia.abo.html> and <https://translate.google.com/translate?hl=en&sl=sk&u=http://www.zakonypreludi.sk/zz/1986-73&prev=search> (last visited Jan. 10, 2018).

<sup>147</sup> *Id.* at Section 5.

<sup>148</sup> *Id.* at Section 6(1)

<sup>149</sup> Pavol Stracansky, *Human Rights – Slovakia: Barriers Go Up for Abortion*, Inter Press Service News Agency (June 26, 2009) <http://www.ipsnews.net/2009/06/human-rights-slovakia-barriers-go-up-for-abortion/> (last visited Jan. 11, 2018).

termination of pregnancy... has been performed on a woman between 16 and 18 years of age, the health establishment shall notify her legal representative.”<sup>150</sup>

69) Additionally, the change of legislation introduced mandatory pre-abortion counseling, in which the doctor informs the patient of the “risks and alternatives” of abortion. “(2) Instruction prior to informed consent shall be provided in the manner provided for in Section 6 2 and must include information on: (a) the purpose, nature, course and consequences of artificial discontinuation of pregnancy; (b) the physical and psychological risks of artificial abortion, (c) the current stage of development of the embryo or fetus to be completed and its authorization to obtain an ultrasound examination record; (d) alternatives to artificial discontinuation of pregnancy, in particular the possibility: 1. the confidentiality of her person in connection with the birth (Section 11 (11)); 2. adoption of a child after birth; 3. financial, material or psychological assistance in pregnancy provided by civil associations, non-profit organizations, foundations, churches and religious societies.”<sup>151</sup>

70) The law, as modified in 2009, also decrees that “such artificial discontinuation of pregnancy may be carried out at the earliest 48 hours after the submission of the information notification [i.e., request by a woman for an abortion] pursuant to paragraph 2; in such a case, the physician is required to provide information to the woman in the scope referred to in paragraph 2 and to transmit it to him in writing, including a list of civil associations, non-profit organizations, foundations, churches and religious societies that provide women with financial, material and psychological assistance in pregnancy.”<sup>152</sup> Information about every patient undergoing an abortion, “including an identity number given to every Slovak at birth, will also be sent to a state health information institute.”<sup>153</sup>

### **Analysis: ART under the Covenant**

71) The right to benefit from scientific progress includes the right to access and undergo scientific procedures and methods that help improve health and safety. Abortion, access to affordable

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<sup>150</sup> *The Health Care Law No. 576/2004 Coll.*, *supra* note 45, at Section 6b (2).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at Section 6b (3).

<sup>153</sup> Stracansky, *supra* note 154.

contraception, and education on sex and reproduction are incorporated within the rights outlined in Article 10, Article 12, and Article 15 of the Covenant.

72) Additionally, as emphasized in this Committee's General Comment No. 14, the right to reproductive health means that individuals have the freedom to decide if and when to reproduce.<sup>154</sup> States must also ensure that their residents are informed and have access to safe, effective, affordable and acceptable methods of family planning.<sup>155</sup>

73) Slovakia's policies on abortion and contraceptives violates their duties under Articles 10, 12 and 15 of the Covenant, and, indeed, they have already been put on notice of this fact. In 2012, in the most recent Concluding Observations, in response to Slovakia's second periodic report, this Honorable Committee wrote:

“The Committee is concerned by the fact that the new law on social security adopted in September 2011 has reduced coverage in terms of reproductive and sexual health services, in particular the prescription of contraceptives...The Committee is also concerned by the fact that the confidentiality of the personal data of patients undergoing abortion is not guaranteed...The Committee recommends that the State party expand the public insurance scheme to cover reproductive and sexual health services, allowing the prescription of contraceptives, including the most up-to-date. The Committee also recommends that the State party ensure that the personal data of patients undergoing abortion remain confidential.”<sup>156</sup>

74) The Committee also expressed concern over the lack of sexual and reproductive health education in Slovak schools, stating:

“The Committee recommends that the State party take all appropriate steps to ensure that students receive sexual and

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<sup>154</sup> United Nations Committee on Economic, Social, and Cultural Rights, General Comment No. 14, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: The Right to the Highest Attainable Standard of Health* at ¶ 8, Doc. E/C.12/2000/4 (Aug. 11, 2000).

<sup>155</sup> *Id.*

<sup>156</sup> Committee on Economic, Social and Cultural Rights, *Concluding comments of the Committee on the Economic, Social and Cultural Rights: Slovakia*, 8 June 2012, E/C.12/SVK/CO/2, para. 24. [Italics added]

reproductive health education at school in order to avert the risks associated with early pregnancy and sexually transmitted diseases.”<sup>157</sup>

75) Apparently, these recommendations are been ignored, as Slovakia failed to address abortion in their most recent periodic report for the Covenant.<sup>158</sup> Rather than following the Committee’s recommendations regarding contraceptives, in its current report the Slovak government rebuffed the suggestion and restated their position contrary to Committee recommendations. In its current periodic report, Slovakia stated:

“[T]here currently are registered or available in the SR 387 types of hormonal contraception preparations and 13 types of contraceptives for local use, which a healthcare provider can prescribe to a women and she can, based on a prescription, buy it in a pharmacy, *paying the full price*. A pharmacist will provide the woman with necessary information on the product and the method of use.”<sup>159</sup>

76) The report also bizarrely seems to imply that hormonal contraceptives are not a form of contraception and cannot be covered under Slovak health insurance because they do not treat an illness:

“Generally, we perceive the contraception as a protection against unwanted pregnancy by means of contraceptive methods intended not only for a woman, but also for a man. Medicines that contain a substance preventing conception, pregnancy, such as contraceptives, are not included in a list of officially set prices or in a list of categorised drugs since conception and pregnancy are natural physiological phenomenons which cannot be considered

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<sup>157</sup> *Id.* at para. 25. [Italics added].

<sup>158</sup> Committee on Economic, Social and Cultural Rights, *Third Periodic Report for the Slovak Republic on the International Covenant of Economic, Social and Cultural Rights*, E/C.12/SVK/3 (June 30 2017), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2f3&Lang=en) (last visited Jan. 11 2018).

<sup>159</sup> *Id.*

pathological.”<sup>160</sup>

77) If that is correct, then it is difficult to understand why abortions, which also do not treat a “pathological” condition, are covered under Slovak health insurance,<sup>161</sup> and that the health insurance code states that coverage of health measures whose “effectiveness of health performance in the context of *prevention*, diagnosis or treatment”<sup>162</sup> is proved are covered. Contraception is one of the most effective means of preventing pregnancy,<sup>163</sup> and there are no excuses for their exclusion from Slovak health insurance.

78) As to abortion, Slovakia’s policies on mandatory counseling and a 48-hour waiting period for abortions arguably violate its international legal obligations. In *Tysiāc v. Poland*, the European Court of Human Rights stated: “the Court observes that the very nature of the issues involved in decisions to terminate a pregnancy is such that the time factor is of critical importance. The procedures in place should therefore ensure that such decisions are timely so as to limit or prevent damage to a woman's health which might be occasioned by a late abortion.”<sup>164</sup>

79) We believe that until Slovakia: a) guarantees privacy of abortion patients; b) removes the two-day waiting period and mandatory counseling requirement for abortions; c) improves upon sexual and reproductive health education; and d) requires coverage for contraceptives under their national health care plan, it will not adequately meet their obligations under the rights to reproductive autonomy, to family, to health, and to science.

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<sup>160</sup> The Law of the National Council of the Slovak Republic of 9 March 1995 on the Health Regulations 98/1995 Coll. Section 34(a), available in English at:

[https://translate.googleusercontent.com/translate\\_c?depth=1&hl=en&prev=search&rurl=translate.google.com&sl=sk&ssp=nmt4&u=https://www.noveaspi.sk/products/lawText/1/43029/1/2&usg=ALkJrhjCILUSg7yGy3cETIdgDLMeGpwXrg](https://translate.googleusercontent.com/translate_c?depth=1&hl=en&prev=search&rurl=translate.google.com&sl=sk&ssp=nmt4&u=https://www.noveaspi.sk/products/lawText/1/43029/1/2&usg=ALkJrhjCILUSg7yGy3cETIdgDLMeGpwXrg) (last visited Jan. 11, 2018).

<sup>161</sup> *The Health Care Law No. 576/2004 Coll.*, *supra* note 45, at Section 2.

<sup>162</sup> The Law of the National Council of the Slovak Republic of 9 March 1995 on the Health Regulations 98/1995 Coll. Section 3(3); 34(a), <https://translate.google.com/translate?hl=en&sl=sk&u=http://www.zakonypreludi.sk/zz/2004-576&prev=search>. [Italics added].

<sup>163</sup> *Calculated Injustice*, *supra* note 23.

<sup>164</sup> *Tysiāc v. Poland*, 5410/03 Eur. Ct. H.R. (2007). [Italics added].

[https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Tysiāc\\_decision.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Tysiāc_decision.pdf)

## RECOMMENDATIONS

80) We recommend that this Honorable Committee include at least one of the following questions in the List of Issues it will prepare for the Slovak Republic:

- i Please explain how a total ban on hESC research, one with extraterritorial effects, can be reconciled with its Article 15.2, 15.3 and 15.4 obligation to take steps towards achieving the full realization of the Right to enjoy the benefits of scientific progress and its application, the duty to respect the freedom indispensable for scientific research and creative activity, and the duty to recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.
- ii Please, report on what steps the Slovak Republic has taken, or intends to take, to repealing criminal penalties for scientists performing hESC research.
- iii Please explain how banning surrogacy is consistent with Article 10 (Right to Family), Article 12 (Rights to reproductive autonomy and reproductive health), and Article 15 (Right to enjoy the benefits of scientific progress and its application) of the Covenant.
- iv Since Article 12 (Right to health) and the Article 15 (Right to science) must be fulfilled without discrimination, please explain the Slovak Republic's current position on limiting ART to men and women in an "intimate" relationship does not discriminate against homosexual couples and single individuals who seek to have children.
- v Since Article 10 of the Covenant mandates that the widest possible protections must be according to the establishment of the family, please, explain the Slovak Republic's current position in preventing access to ART to those who are not men and women in an "intimate" relationship.
- vi Please, report on what steps the Slovak Republic has taken, or intends to take, to ensure respect of the "right to reproductive autonomy," especially regarding teenagers' access to abortion and sexual education, and women's access to contraceptives, sexual education, and emerging science.
- vii Please, outline what steps Slovakia has taken, or intends to take, to ensure that contraceptives are affordable and accessible to all Slovak residents.