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ASOCIATIA EUROPEANA A MEDICILOR DIN SPITALE**

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Amendments to the Criminal Code and to the Law on Health Care Providers – request for support

Dear Mr. President Joao De Deus,
please, let me bring to your attention the information on recent development in Slovakia concerning new proposal of amendments of the Criminal Code and of the Law on Health Care Workers.

Historical context

In November 2011, just three days before termination of contracts of more than 2000 hospital doctors, the Government of the Slovak Republic introduced emergency powers, powers designed to be used under extreme situation such as war, in 15 public hospitals. The emergency powers, allowed by the constitution, can be enacted for a maximum of 90 days if the lives and health of citizens are at risk. These powers were now used to could compel doctors to return to work. Despite of this measurement, in December, a manpower crisis resulted in vast restriction of the hospitals performance. The government admitted that they lost control over the hospitals and made an agreement with doctors. The game was over, but the bitter taste is still here.

A new government arose from elections in March 2013 and new Minister of Health made a deal with Labour Union of Doctors regarding wages. There are still ongoing negotiations concerning working conditions in hospitals. Surprisingly, at the same time when things seems going the right way, a member of the Slovak Parliament from the ruling party „SMER – sociálna demokracia“ proposes amendments of the Criminal Code and of the Law on Health

Care Workers. These amendments are verbally supported also by State Deputy of the Ministry of Health. SMER – social democracy is member of PES in the European Parliament and possess majority in the Slovak Parliament.

These amendments criminalize doctors, nurses and other healthcare workers.

One of them tightens the conditions for demonstrating integrity of doctor which is indispensable condition for his/her competency. Thus, without any court's decision on prohibition of medical practice, doctors would be prohibited to perform medicine even in case of unintentional crime and/or in the one unrelated to health care providing (e.g. traffic accident).

Even more dangerous is proposal of harsh punishment of doctors in case of breach of duty in the time of emergency powers. It aims to find a way how to control doctors in time when health care managers are unable to solve problems appropriately and lawfully. This is an evident attempt of abusing of emergency powers as we could see it in 2011. We believe the proposal comprises all the characteristics of forced labour and such a law would be contrary to Article 1 of the ILO Convention on the Abolition of Forced Labour. 105 of 1957.

Each member / 3 / of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to use any form of forced or compulsory labour:

- a) as a means of political coercion or education or as a punishment for persons having or expressing political views or manifest ideological opposition to the established political, social or economic system,*
- b) as a method of mobilizing and using labour for economic development objectives,*
- c) as a means of labour discipline,*
- d) as a punishment for participation in strikes;*
- e) as a means of racial, social, national or religious discrimination.*

Ministry of Health would be authorised by law to evaluate cases of breach of duty during emergency powers and to impose fines to physicians ten times higher than are fines for other citizens in the same offense. This breaks the principle of equality in law. Moreover, the Ministry of Health will demand from the Slovak Medical Chamber to revoke the registration of doctor for as long as 10 years. We consider this unprecedented violation of the right to carry out medical profession. It is also an attack against the autonomy of doctors profession.

Surprisingly, these amendments which substantially interfere not only with health care professional rights but also with availability of health care, were forwarded without any discussion with those involved – health care professionals and patients. Legislation based on intimidation cannot be one of the cornerstones of sustainability of health care.

The Slovak Medical Chamber invited deputies of nine health care professional organisations including the Labour Union of Doctors and Labour union of Nurses and Midwives on 30th April 2013. They sent letters to the Prime Minister of the Slovak Republic Mr. Fico and to the Head of the Slovak Parliament Mr. Paška asking them for their personal input to stopping proposed changes in legislation.

Dear colleague,

on behalf of the Slovak doctors I kindly ask you for support of our effort to convince the members of the Slovak Parliament as well as the members of the Slovak Government that abovementioned legislative initiative is regrettable and that given proposal of amendment should be refused.

If you decide to do so, please, send your letter of support to:

Mr. Robert Fico, Prime Minister of the Slovak Republic

Úrad Vlády SR

Námestie slobody 1

813 70 Bratislava

premier@vlada.gov.sk

press@government.gov.sk

Mr. Pavol Paška, Head of the Parliament of the Slovak Republic

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812 80 Bratislava 1

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Kind regards,

Marian Kollár,

President of the Slovak Medical Chamber





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Criminalisation of doctors in Slovakia
i/ Changing of the meaning of doctors integrity

Integrity (which is an essential condition for performing the health care profession by law) loses also the doctor convicted of negligence, it means for unintentional crime which subject matter linked with performing of a health profession.

This means that any failure of a health care professional, although there will be a extenuating circumstance will mean the exclusion from the healthcare profession.

Also minimal intentional offenses unrelated to the performance of health profession (such as poaching, perverting the course of official decisions, copyright infringement) will mean the loss of good repute.

<p>§ 38 par. 1 of the Act. 578/2004 Z. z. on health care providers, health workers and professional organizations in the health and amending certain laws:</p>	
<p>The current wording of good repute</p>	<p>The proposed wording of good repute</p>
<p>(1) A person with good repute for the purposes of this Act is considered a person who has not been convicted for</p> <p>a) a particularly serious offense, 29)</p> <p>b) the offense of accepting a bribe, for bribery crime and the offense of indirect corruption, 30)</p> <p>c) intentional offense in connection with the performance of healthcare profession.</p>	<p>(1) A person with good repute for the purposes of this Act is considered a person who has not been convicted for</p> <p>a) a criminal offense which matter is connected with the performance of healthcare profession or for an offense committed intentionally, 29)".</p> <p>b) the offense of accepting a bribe, for bribery crime and the offense of indirect corruption, 30)</p> <p>c) violation of duties in a crisis situation or crime avoidance of duties in a crisis situation, 30a)". * (amendment of Member of Parliament for SMER-SD Mr. Valocký)</p>

ii Crisis situations and authority to the Ministry of Health impose a fine resulting in a 10-years exclusion from health care profession without a court decision

- Switch the imposition of penalties for health workers from the district offices to the Ministry of Health,
- The consequence- 10 years without the possibility to perform health work - this will happen without a court decision,
- 10 times the higher fine for healthcare professionals than that imposed on other people for not fulfilling working obligations,
- Introduction of self-accusatory obligations of doctor- report him/her/self about the breach of good repute

	<p>Draft Ministry of Justice and amendment the Member of the National Council of the Slovak Republic Jozef Valocký</p> <p>(amendment to § 63b of Act no. 578/2004 Coll. concerning healthcare providers, health workers and professional organizations in the health and amending certain laws:</p>
The original wording	The proposed wording
<p>§ 63b Cancellation of registration</p> <p>(1) The Chamber will cancel the registration to those who</p> <p>a) applied for cancellation of the registration in connection with termination of healthcare profession,</p> <p>b) has ceased to fulfil the conditions for the performance of healthcare profession according to § 31 par. 1 point. a) to d).</p> <p>(2) Chamber will decide cancellation of the registration within 30 days from the date on which he became aware of the facts referred to in paragraph 1. The decision to cancel registration will be delivered to healthcare worker and in case the employees to her/his employer also.</p>	<p>6. In § 63b paragraph 1 reads:</p> <p>"(1) The Chamber shall cancel the registration to those,</p> <p>a) who has applied for cancellation of the registration in connection with the termination of healthcare profession,</p> <p>b) has ceased to fulfill the conditions for performance of healthcare profession according to § 31 paragraph. 1 point. a) to d),</p> <p>c) who was prohibited lifetime the performance of healthcare profession.41a) ".</p> <p>d) has breached an obligation according to § 80 paragraph. 1 point. h) and was fined according to § 82 paragraph. 5 point. b). '</p> <p><i>Statement of reasons:</i></p> <p><i>As a reason for cancelling the registration of health professionals is added a breach of duty during the crisis perform an obligation imposed by the competent authorities to ensure the provision of health care, a breach of this obligation will be decided by the Ministry of Health of the Slovak Republic. Under this decision, the relevant Chamber cancels healthcare professional registration. In § 63c behind the first sentence following new second sentence, which reads: "If the registration of healthcare professional was cancelled due according to § 63b paragraph. 1 point. d), health care worker may ask for restoration earliest after the expiration of ten years from the cancellation of the registration. ".."</i></p> <p>Plus self-accusatory paragraph</p> <p>§ 72a</p> <p>Healthcare worker is obliged immediately notify the Chamber information decisive for the temporary suspension of the license (§ 73) and the withdrawal of the license (§ 74) and submit certified copies of documents proving these data.</p> <p>".</p>

iii Changes in the Criminal Code

The draft changes in Criminal Code introduces vague constituent elements that are very similar to military criminal offenses, even the more stringent due to the wide range of undefined procedure:

"§ 290a

Infringements of obligations under a crisis situation

(1) Any person who in emergency situation refuses to perform or intentionally fails obligation imposed by public authorities on national defence and maintain its safety, to protect the life and health of persons, protection of property, the respect for fundamental rights and freedoms, to avert danger or to restore the disturbed economy, particular the proper functioning of the supply, transport and public services in the municipalities and the proper functioning of constitutional bodies shall be punished by imprisonment of up to two years.

(2) imprisonment for two to five years the offender will be punished if commits the criminal offense referred to in paragraph 1

a) and causes grievous bodily harm or death, or

b) by more serious manner.

§ 290b

Evading the performance of duties in a crisis situation

(1) Any person who in a crisis situation by the intention of avoiding the obligations imposed by public authorities on national defence and maintain its safety, to protect the life and health of persons, protection of property, the respect for fundamental rights and freedoms, to avert danger or to restore economic disruption , particular the proper functioning of the supply, transport and public services in the municipalities and the proper functioning of constitutional bodies harms himself on health, pretends illness, falsifies document, abuse addictive substance or uses other artifice, shall be punished by imprisonment of up to two years.

(2) imprisonment for two to five years the offender will be punished if commits the criminal offense referred to in paragraph 1

a) and causes grievous bodily harm or death, or

b) by more serious manner.



Brussels, 11 May 2013

The AEMH - European Association of Senior Hospital Physicians has been alerted on the recent proposed amendments of the Criminal Code and of the Law on Health Care Workers in Slovakia.

The AEMH is deeply concerned as these amendments criminalize doctors, nurses and other healthcare workers and are an attack against the autonomy of the medical profession.

We believe that the proposed changes to the Criminal Code and the law on healthcare workers would be contrary to Article 1 of the ILO Convention on the Abolition of Forced Labour Nr 105 of 1957. The AEMH condemns all attacks against international Conventions and calls for compliance with legal provisions of the Code of Professional Ethics.

As European organisation, the AEMH is committed to and guardian of European rights. Our concern is that the right to free movement, one of the four pillars of freedom of European citizens, would be compromised if the right to practice depends only on decisions of governmental authorities. The medical profession is an independent profession and is entitled to the right of self-regulation by its bodies and institutions.

In the framework of the European Medical Organisations Alliance, the AEMH will support its sister organizations and disseminate information on their respective related actions, especially those of FEMS, the European Federation of Salaried Doctors.

We hereby express our support to our Slovakian colleagues and their claim to perform their tasks in full respect of the integrity of doctors, which is one of the prerequisites to good quality healthcare and patients' safety.

We urge you not to support the proposed law changes in respect of international conventions and European democratic achievements.

Dr João de Deus
AEMH-President