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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT OPINION**  
**ON THE ACT ON THE STATE LANGUAGE**  
**OF THE SLOVAK REPUBLIC**

**On the basis of comments by**

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**Mr Jan VELAERS (Member, Belgium)**  
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## I. Introduction

1. On 25 September 2009, the authorities of the Slovak Republic requested the Venice Commission to prepare an opinion on the amendments, adopted in 2009, to Act No. 270/1995 on the State Language of the Slovak Republic (CDL(2010)076, hereinafter “the State Language Act”).
2. A working group was set up, composed of Messrs Sergio Bartole, Ben Vermeulen and Jan Velaers.
3. In January 2010 the working group, accompanied by Ms Simona Granata-Menghini of the Venice Commission secretariat, travelled to the Slovak Republic in order to meet with the authorities as well as with representatives of the minorities living in that country. The Venice Commission wishes to thank them all for the fruitful discussions which took place on this occasion.
4. Subsequent to the visit, the working group submitted a list of questions to the Slovak authorities, aiming at understanding better the legal and factual background as well as at obtaining clarifications of the amendments under examination. The Slovak Ministry of Culture and the Ministry of Education provided their replies to the questions in March 2010 (see CDL(2010)078 and CDL(2010)079 respectively).
5. In the preparation of the present opinion, the working group consulted the Advisory Committee on the Framework Convention for the Protection of National Minorities. It also consulted an expert on the European Charter on Local Self-government (CDL(2010)079).
6. *The present opinion was adopted by the Venice Commission at its ... Plenary Session (Venice, ...).*

## II. Background

7. The Republic of Slovakia is a multilingual state. The large majority of the inhabitants are Slovaks, but according to the most recent census, in 2001, there are also different minority groups living in the country, among which the largest group are the Hungarians (520,528 – 9.7%) followed by the Roma (89,920 – 1.7%), the Czechs (44,620 – 0.8%), the Ruthenians (24,201 – 0.4 %), the Ukrainians (10,814 – 0.2 %) and the Germans (5,405 – 0.1 %).
8. According to article 6 of the Constitution of the Slovak Republic  
*“(1) The State Language on the territory of the Slovak Republic is the Slovak language.  
(2) The use of languages other than the state language in official communications shall be laid down by law.”*

9. The Slovak Republic has ratified international treaties on the protection of human rights, which prohibit discrimination on the ground of language<sup>1</sup> and which protect minority rights (notably article 27 of the International Covenant on Civic and Political Rights<sup>2</sup>, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or

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<sup>1</sup> See art. 14 European Convention on Human Rights; art. 1 of Protocol No 12 to the ECHR; art. E of the European Social Charter; art. 26 of the International Covenant on the protection of civic and political rights; art.2 (2) of the International Covenant on social, cultural and economic rights

<sup>2</sup> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Minority Languages). Ratified international treaties prevail over ordinary legislation (Article 7 of the Constitution). The fulfilment of the Republic of Slovakia's international obligations to protect the language rights of national minorities is monitored by the specific supervisory bodies of the Council of Europe - the Advisory Committee on the Framework Convention for the Protection of National Minorities<sup>3</sup> (hereinafter: ACFC, the Framework Convention), the Committee of Experts of the European Charter for Regional or Minority Languages ("the Charter")<sup>4</sup>, the European Commission against Racism and Intolerance (ECRI)<sup>5</sup> and the European Commissioner for Human Rights<sup>6</sup> – and has led to the adoption of recommendations by the Committee of Ministers of the Council of Europe<sup>7</sup>.

10. The fulfilment of international obligations relating to minority rights has also been monitored by specific supervisory bodies of the United Nations (UN), the European Union (EU)<sup>8</sup> and the Organization for Security and Co-operation in Europe (OSCE), notably the High Commissioner on National Minorities. As to the amendments to the "State Language Act", the OSCE High Commissioner on National Minorities issued an opinion dated 22 July 2009<sup>9</sup> as well as a statement on 4 January 2010 on the "Principles for the Implementation of the amended State Language Act"<sup>10</sup>.

11. The Act on the State Language of the Slovak Republic was first adopted in 1995 (Act No. 270/1995), and subsequently amended in 1999 and again in 2009 (the amendments under consideration).

12. On 10 July 1999 the Slovakian legislator adopted the Act on the Use of National Minority Languages (Act No. 184/1999 Coll.). This Act lays down rules for the use of minority languages in municipalities where the minority represents at least 20% of the overall population. In several other laws, specific provisions also guarantee linguistic rights.<sup>11</sup>

13. On 16 December 2009 the Government adopted a Resolution setting out the "Principles of the Government of the Slovak Republic for the implementation of the Act of the National Council of the Slovak Republic N° 270/1995 Coll. on the State Language of the Slovak Republic." (hereinafter referred to as "the Principles", CDL(2010)075).

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<sup>3</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, Second opinion on the Slovak Republic, adopted on 26 May 2005, ACFC/OP/II (2005)004; First Opinion on the Slovak Republic, adopted on 22 September 2000, ACFC/INF/OP/II(2001)001.

<sup>4</sup> See European Charter for Regional and Minority Languages, 'Application of the Charter in Slovakia – Initial monitoring cycle', 21 February 2007, ECRML(2007)1.

<sup>5</sup> See ECRI Report on Slovakia (fourth monitoring cycle) adopted on 19 December 2008, CRI(2009) 20 (third monitoring cycle), adopted on 27 January 2004 CRI(2004)4; (second monitoring cycle), adopted on 27 June 2000, CRI (2000)35; (first monitoring cycle), adopted on 15 June 1998, CRI(98)51.

<sup>6</sup> See Office of the Commissioner for Human Rights, "Follow-up report on the Slovak Republic (2001-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights", 29 March 2006, CommDH(2006)5.

<sup>7</sup> As to the implementation of the Framework Convention for the protection of National Minorities: see Resolution adopted on 21 November 2001 and Resolution ResCMN(2006)8, 21 June 2006;

<sup>8</sup> See European Union Agency for Fundamental Rights (FRA), "FRA Annual Report 2008", 24 June 2008.

<sup>9</sup> Opinion of the OSCE High Commissioner on National Minorities on amendments to the "Law on the State Language of the Slovak Republic.", 22 July 2009.

<sup>10</sup> OSCE Press release. The Hague, 4 January 2010.

<sup>11</sup> See e.g. Par. 18 of the Code of civil Judicial Procedure, as amended by Act No 341/2005; Act of the National Council of the Slovak Republic No 191/1994 on the Denomination of Municipalities in the Languages of National Minorities; Act No 184/1999 on the Use of the Languages of National Minorities; Par 5 1(e) of Act No 619/2003 on the Slovak Radio, as amended; Par. 5 1 (g) of Act No. 16/2004 on the Slovak Television as amended, Par. 22, 20 of the Code of Criminal Procedure; Par 2, 2 of the Act No 167/2008 on Periodical Press and News Agency Service, which also amends certain other acts (Press Act); Par 11, 2, Par. 12, 3 and Par. 18, 3, of Act No 245/2008 on Education and Training (Schools Act), which also amends certain other acts.

### III. The object of the Opinion

#### A. The relationship between the State Language Act and the Act on the Use of the Languages of National Minorities

14. In the present Opinion, the Venice Commission has not examined the overall situation of the minorities in the Slovak Republic as to the protection of their linguistic rights. The mandate of the Venice Commission was not to examine every aspect of the implementation of the Framework Convention for the Protection of National Minorities or of the Charter for Regional or Minority Languages. The Opinion is limited to the provisions of the State Language Act. Provisions of other acts, such as the Act on the Use of National Minority Languages, have only been taken into account to the extent that they are relevant to a better understanding of the scope of the State Language Act or to the extent that they are directly or indirectly affected by the State Language Act.

15. Article 1 (4) of the State Language Act defines in general terms the relationship between this Act and the Act on the Use of the Languages of National Minorities. It reads as follows: “*Unless this Act [the State Language Act] provides otherwise* (emphasis added), the use of the languages of national minorities and ethnic groups are governed by separate regulations.”

16. The “Principles”, instead, provide that: “All previously adopted laws permitting the use of the languages of national minorities, in particular Act N° 184/1999 Coll. on the use of the languages of national minorities, as amended by Act n° 318/2009 Coll., have the status of special law (*lex specialis derogat generali*) in relation to the State Language Act *insofar as the State Language Act recognises this status* (emphasis added).”<sup>12</sup>

17. The Venice Commission regrets that the relationship between the two Acts is not determined in a less ambiguous and contradictory manner. The principle “*Lex specialis derogat lege generali*”, as such, does not rule every aspect of the relationship between the State Language Act and the Act on the Use of the Languages of National Minorities. On the contrary, whenever there is a contradiction between the Act on the Use of the Languages of National Minorities on the one hand and the State Language Act on the other, it seems that it is the latter that will prevail.

18. In this context, the Venice Commission would welcome a comprehensive, holistic approach on the part of the Slovak authorities to the protection of minority rights in the Slovak Republic, as was recommended by the OSCE High Commissioner on National Minorities.

19. In order to assess the effect of the State Language Act on the linguistic rights of minorities, the Venice Commission will have to examine the different provisions of this Act. Three types of provisions have to be distinguished.

20. In the first place, several provisions of the State Language Act explicitly confirm the special regulations on the national minorities:

Art. 3 (1): “this provision shall be without prejudice to the use of languages of national minorities in official communication pursuant to a separate regulation.”<sup>13</sup>

Art. 3 (3) b: “the state language shall be the language of public documents except for school certificates issued by the schools that use the language of a national minority or a foreign language as the language of instruction.”<sup>14</sup>

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<sup>12</sup> Principles, p. 8, 2

<sup>13</sup> This refers to the Act No 184/1999 on the use of the languages of national minorities

<sup>14</sup> This refers to par. 12 of Act No 245/2008 on Education and Training (Schools Act)

Art. 3 (4): “the state language shall be used in all the information systems of the authorities and public legal persons, another language may also be used whenever a separate regulation so provides.”<sup>15</sup>

Art. 3 (5): “In official communication with the authorities and legal persons referred to in paragraph 1<sup>16</sup>, a natural or legal person shall use the state language, unless this Act, separate regulation or any international treaty promulgated by the law provides otherwise.”<sup>17</sup>

Art. 3a: “the denomination of municipalities and streets and other geographical designations in the languages of national minorities is covered by a separate regulation.”<sup>18</sup>

Art. 4 (1): “A language other than the state language may be used as the language of instruction and testing to the extent laid down in separate regulations.”<sup>19</sup>

Art. 4 (4): “The textbooks and teaching texts in the educational and training process shall be in the state language, unless separate regulations provide otherwise for languages of national minorities”<sup>20</sup>

Art. 5 (4): “Unless a separate regulation provides otherwise, the state language shall be used in a) periodical press or news agency service<sup>21</sup> or b) non-periodical publications<sup>22</sup>

Art. 5 (7): The inscriptions on monuments, memorials and plaques shall be in the state language. ... This provision does not apply to historic inscriptions on memorials, monuments and memorial plaques which are subject to protection under a separate regulation.”<sup>23</sup>

Art. 7 (2): “This provision [on the Use of the State Language in Judicial Proceedings, Administrative Proceedings and Proceedings before Law Enforcement Authorities], without prejudice to the rights of persons belonging to national minorities and ethnic groups and the rights of persons who do not have command of the state language, as laid down in special regulations.”<sup>24</sup>

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<sup>15</sup> This refers e.g. to par. 3, 6 of Act No 530/2003 on the Companies Register, which also amends and supplements certain other Acts, in the wording of Act 24/2007 3

<sup>16</sup> Art. 3 (1) “The state authorities, authorities of municipal administration, other bodies of public administration, the legal persons founded by such public authorities and the legal persons established by the operation of law”

<sup>17</sup> This refers e.g. to par. 42 of Act No 162/1995 on the Real Estate Cadastre and on Registration of Titles and other Rights pertaining to Property (Cadastral Act), as amended; par. 11 of Act No 200/1997 on Student Loan Fund as amended by Act No 231/2000; par. 2, 3 of Act No 184/1999 on the Use of Languages of National Minorities; par. 109 of Act No 725/2004 on Conditions for Use of Vehicles in Road Traffic, which also amends and supplements certain other acts; par. 11 of Act No 193/2005 on Phytosanitary Care as amended by Act No 295/2007.

<sup>18</sup> This refers to the Act No 191/1994 on the Denomination of Municipalities in the Languages of National Minorities and to Act No 184/1999 on the Use of Languages of National Minorities.

<sup>19</sup> This refers to par 12, 5 of Act No 245/2008 on Education and Training (Schools Act)

<sup>20</sup> This refers to par. 13 Act No 245/2008 on Education and Training (Schools Act)

<sup>21</sup> This refers to par. 2, 1 and 4 of Act No 167/2008 on Periodical Press and New Agency Service, which also amends and supplements certain other Acts (Press Act)

<sup>22</sup> This refers to par. 2, 3 of Act No 212/1997

<sup>23</sup> This refers to Act No 49/2002 on the Protection of Monuments and Historical Sites, as amended by Act No 479/2005.

<sup>24</sup> This refers to e.g. par. 18 of the Code of civil Judicial Procedure, as amended by Act No 341/2005; Act No 382/2004 on Experts, Interpreters and Translators, as amended; par. 2, 20 of the Code of Criminal Procedure.

21. As far as these special regulations are only confirmed by the State Language Act and are not amended by it, they will not be examined in this Opinion. For their compatibility with the international standards on the protection on human rights and minority rights, the Commission refers to the Opinions of the above mentioned supervisory bodies of the Council of Europe, the OSCE, the EU and the United Nations.

22. Secondly, several provisions of the State Language Act broaden the protection of the national minorities by introducing changes in favour of minority languages.

23. In a commentary on “the Language Act and the rights of persons belonging to national minorities in Slovakia” prepared by the Ministry of Culture of the Slovak Republic in August 2009, attention is drawn to these improvements to the guarantees for minority languages. The document reads as follows: *“The amendment to the State Language Act does expand the possibilities of using other languages everywhere where the previous wording of the law had not provided for this, such as in drawing up employment contracts, financial and technical documentation, articles of association, of collectives, political parties, political movements and commercial companies, in the transposition of international technical standards into the system of Slovak Technical Standards, in the broadcasting of live radio and television programmes, in theatre plays with original texts, in educational events aimed at foreign language education. There is also a change that abolished the obligation to prove knowledge of the state language for employment in state bodies, state organisations, local government bodies and statutory bodies.”*<sup>25</sup> The document particularly stresses several changes in favour of minority languages in radio and television broadcasting.

24. The Venice Commission welcomes this further development of guarantees for the protection of minority rights.

25. Finally, there are provisions which affect the exercise of the existing linguistic rights of the national minorities either by restricting these rights or by imposing the parallel use of the state language. The Venice Commission will, in part V of this Opinion under the “Specific remarks”, examine those provisions, which raise questions as to their compatibility with international standards on human rights and the protection of minorities.

#### B. The State Language Act and the “Principles”

26. In assessing the State Language Law, the Venice Commission has also taken into account the “Principles” of the Government of the Slovak Republic for the implementation of the State Language Act. These Principles were issued by the Slovak Government in accordance with article 119 (i) of the Slovak Constitution, which determines: “The Government as a body decides on ... (i.) fundamental issues of internal and foreign policy.”

27. The declared purpose of the Principles is to “standardise the interpretation of the provisions of the Act on the state language of the National Council”. In contradiction to what the title of this document suggests, it contains not only general and fundamental “Principles” which must prevail in the interpretation of the Act, but also definitions, additional rules restricting the scope of the law and very precise guidelines to be applied by the government in the implementation of the law.

28. The legal status of the Principles is a rather complex one. As only the legislator itself can give an authentic interpretation of an Act, the document cannot be considered an authentic interpretation of the State Language Act. As such, it therefore has no legally binding force. It is a resolution of the government which binds civil servants subordinated to it for as long as the

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<sup>25</sup> Ministry of Culture of the Slovak Republic, “The language act and the rights of persons belonging to national minorities in Slovakia. Commentary,” August 2009. p. 3

government maintains it; but the government may repeal it. It does not even necessarily bind a subsequent government, which may well change it or repeal it. According to the authorities, in applying the State Language Act, the judiciary will not be obliged to comply with these Principles. However, the significance of the “Principles” should not be underestimated. In applying the State Language Act, the Government itself and the other public authorities depending on it will indeed implement these principles.

29. It is, moreover, suggested by the Slovak authorities that if the Slovak citizens invoke these “Principles” in proceedings before the courts and tribunals, the judges will, on the basis of the principle of “good faith”, implement these principles in their case law.

30. The Venice Commission welcomes the efforts of the Slovak Government to elucidate the State Language Law. A number of issues do, indeed, arise from imprecise or insufficiently defined provisions of this Act.

31. Although the “Principles” will be very important for the application of the State Language Act, the Venice Commission stresses that these principles do not, of themselves, remedy the issues of foreseeability, legal certainty and enforceability which the State Language Act poses. In general, the Venice Commission is of the opinion that the main provisions of the “Principles”, and certainly those which affect or amend the provisions of the State Language Law, should be adopted by parliament and introduced in the latter law.

32. In what follows, the Venice Commission will first comment on the text of the State Language Act. To the extent that the problems that arise out of the reading of this text could be solved by the interpretation or the application suggested by the document on the “Principles”, the Commission will draw attention to them. If necessary, the Commission will suggest, in order to enhance legal certainty, integrating some of these principles into the Act itself.

#### **IV. The aim of the State Language Act and the protection of the rights of national minorities**

33. According to the “Principles”, *“the legitimate purpose of the State Language Act is to protect and support the state language in official communication and to protect the right of citizens of the Slovak Republic using the state language to receive and provide information in the state language without restriction.”* The objective of the State Language Act is *“to ensure that it is possible to communicate in the state language in the public sphere in Slovakia and to ensure that someone who does not know a minority language is not discriminated.”*<sup>26</sup>

34. From the outset, the Venice Commission notes that it is rather common in European States that language be given a place in the Constitution. Thirty-six member-states of the Council of Europe, including the Slovak Republic, have done so, and only ten member-states until now have refrained from doing so<sup>27</sup>.

35. In the majority of cases, the constitution identifies the national (or official) language or languages. In some cases, the constitution only mentions minority languages<sup>28</sup>, or leaves it to the legislature to determine what the national (official) language is<sup>29</sup>.

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<sup>26</sup> See Ministry of Culture of the Slovak Republic, “The language act and the rights of persons belonging to national minorities in Slovakia. Commentary,” August 2009.

<sup>27</sup> Bosnia-Herzegovina, Denmark, Germany, Greece, Iceland, Monaco, the Netherlands, San Marino and Sweden. The Dutch government has recently announced its intention to introduce a bill to include a language provision in the Constitution. In Italy, provisions on the official language are contained in the constitutional laws (*statuti*) which regulate the regions of Trentino-Alto Adige and Valle d’Aosta. The United Kingdom does not have a written constitution.

<sup>28</sup> Czech Republic, Hungary, Italy, Norway, Slovenia.

<sup>29</sup> Luxembourg.



36. Quite often the fact that a country becomes independent is a reason to introduce a language provision in the constitution.<sup>30</sup> This provision is then seen as a guarantee of national identity and unity; maintenance of the national language is regarded as a constitutional value<sup>31</sup>. In some cases, the national language is seen as a symbol of unity.<sup>32</sup>

37. Another *ratio* behind language provisions in the constitution is to reflect and protect the bi- or multilingual characteristics of state and society, and to maintain a balance.<sup>33</sup>

38. A final reason for constitutional language provisions is the protection of minorities and/or the recognition of the value of minority languages.<sup>34</sup>

39. In the case of Slovakia, the freedom to use the language of one's choice, as such, is not guaranteed in the Constitution. The regulation of other languages than the official state language is left to the legislature (see para. 8 above).

40. Against this comparative background, the Venice Commission wishes to emphasise that state authorities are perfectly entitled to promote the knowledge and use of the official language and to ensure its protection<sup>35</sup>.

41. In the first place, protecting and promoting the official language is important for the protection of all the citizens of a State. The use of the State language in essential official communications and documents throughout the country allows the State authorities to have access to such information, to intervene as necessary and to be held fully accountable. It therefore responds to public order needs.

42. The protection of the State language has a particular importance for a new State in which, as it is the case for the Slovak Republic, linguistic minorities represent a high percentage of the citizens of the population. The promotion of the State language guarantees the development of the identity of the State community, and further ensures mutual communication among and within the constituent parts of the populations. The possibility for citizens to use the official language throughout the country can be ensured also in order to avoid that they be discriminated against in the enjoyment of their fundamental rights, in areas where the persons belonging to national minorities have a majority position.<sup>36</sup>

43. In addition, knowledge of the official language is also important from the perspective of persons belonging to national minorities. As recognised in the Explanatory Report on the Provisions of the Framework Convention (commentary on article 14 § 3), "*knowledge of the*

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<sup>30</sup> For instance Croatia, Estonia, Georgia, Ireland, Lithuania, Moldova, Slovakia.

<sup>31</sup> See judgment of the Lithuanian Constitutional court of 21 October 1999, <http://www.lrkt.lt/dokumentai/1999/n9a1021a.htm>.

<sup>32</sup> "The language of the Republic shall be French" (art. 2); "Castilian is the official Spanish language of the State. All Spaniards have the duty to know it and the right to use it" (art. 3(1); "No language other than Turkish shall be taught as a mother tongue to Turkish citizens" (art. 42).

<sup>33</sup> Belgium, Cyprus, Ireland, Macedonia, Malta, Switzerland.

<sup>34</sup> Armenia, Azerbaijan, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Hungary, Lithuania, Macedonia, Moldova, Montenegro, Norway, Poland, Serbia, Slovenia, Spain, Ukraine.

<sup>35</sup> This has also been underlined on several occasions by the Advisory Committee on the Framework Convention for the Protection of National Minorities See e.g. Opinion on the Russian Federation ACFC/INF/OP/I(2003) OO5, 2002. Art. 10, para 79.

<sup>36</sup> See Ministry of Culture of the Slovak Republic, "The language act and the rights of persons belonging to national minorities in Slovakia. Commentary," August 2009: "Citizens of the Slovak nationality living in linguistically mixed areas are often denied the right of access to information in state language, particularly in those municipalities where they live in a minority. Official announcements, notices on cultural and other events, notices and adverts in public space are in many cases provided only in the Hungarian language, in contravention also of the previously applicable law" (2 MC, 5).

*official language is a factor of social cohesion and integration*".<sup>37</sup> The Advisory Committee has recognized that the protection of the state language is a legitimate aim<sup>38</sup> and that the authorities are entitled "to pursue further integration efforts pertaining to minorities at various levels of administration, including through provision of teaching of national languages."<sup>39</sup>

44. The Preamble of the European Charter for Regional or Minority Languages stresses that "the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them" and should be done "within the framework of national sovereignty and territorial integrity".

45. Promoting the knowledge of the official language of the State also pursues the legitimate, public interest of persons belonging to national minorities not to be confined to specific geographical areas where the relevant minority language is spoken. The real possibility of circulating and settling down anywhere within the territory of the state, if one so wishes, is important with a view to pursuing one's professional and personal development.

46. The Venice Commission therefore agrees with the authorities of the Slovak Republic and shares the stance of the OSCE High Commissioner for National Minorities that the amendments to the State Language Law pursue a legitimate aim.

47. The legitimacy of an official language's special position and its unifying potential do not, however, absolve the State of the obligation to comply with the provisions of the international conventions on the protection of national minorities<sup>40</sup>. As the OSCE High Commissioner for National Minorities rightly pointed out, it is therefore crucial to strike a proper balance between the promotion of the state language and the protection of the linguistic rights of persons belonging to national minorities.<sup>41</sup> This means, in particular, that such measures should not go beyond what is necessary to achieve the legitimate aim pursued. It should also be noted in this context that the state language, has the advantage of being the language of the majority of the people living in the territory of the State.

## **V. Specific remarks**

### **A. State Language in Official Communication (article 3 par. 1, 2 and 5)**

48. Article 3 (1 and 2) of the State Language Act provides:

*"1. The state authorities, authorities of municipal administration, other bodies of public administration, the legal persons founded by such public authorities and the legal persons established by the operation of law shall use the state language in their official communication; this provision shall be without prejudice to the use of the languages of national minorities in official communication pursuant to a separate regulation and the*

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<sup>37</sup> Explanatory Report to the Framework Convention for the Protection of National Minorities.

<sup>38</sup> See e.g. First Opinion on Estonia, 14 September 2001, para. 39; Second Opinion on Estonia, 24 February 2005, para. 90

<sup>39</sup> Second Opinion on Finland, 2 March 2006, para. 65 and 67.

<sup>40</sup> See also F. de Varennes, "Article 10" in M. Weller (ed.), *The Rights of Minorities. A commentary on the European Framework for the Protection of National Minorities*, Oxford University Press, 2006, 326: "However legitimate it may be to have measures supporting and spreading knowledge of the official language, this must not be at the expense of the right to use a minority language as outlined in Article 10."

<sup>41</sup> Opinion of the OSCE High Commissioner on National Minorities on amendments to the "Law on the State Language of the Slovak Republic.", 22 July 2009, p. 1. See also F. de Varennes, "Article 10" in M. Weller (ed.), *The Rights of Minorities. A commentary on the European Framework for the Protection of National Minorities*, Oxford University Press, 2006, 323: "Given the diversity of languages, populations, and contexts, the Advisory Committee must also be mindful of the legitimacy of an official language's special position and unifying potential when attempting to strike a balance between the two sides."

*use of other languages in official international communication in accordance with the established international practice.*

*2. The employees and civil servants of the authorities and legal persons referred to in paragraph 1, as well as those employed in the transport, postal and telecommunication services, members of the armed forces of the Slovak Republic (hereafter "armed forces"), armed security corps, other armed corps and fire brigades, must have a command of and use the state language in official communication."*

49. According to the "Principles", the term "official communication" *"shall mean the set of activities and actions of authorities ... and employees employed by such authorities ... employees in transport, posts and telecommunications services, members of Armed Forces, armed security forces, other armed forces and fire service in the performance of their official duties."*

50. The Venice Commission observes in the first place that the phrase "without prejudice to the use of the languages of national minorities in official communication pursuant to a separate regulation" in article 3 (1) indicates that the linguistic rights which private individuals can draw from the Framework Convention for the Protection of National Minorities or from the European Charter for Regional or Minority Languages are, in principle, not affected by the State Language Act<sup>42</sup>. The same is true for the Act on the Use of National Minority Languages, which guarantees members of national minorities, in municipalities in which they form at least 20% of the total number of residents, the right to use their mother tongue in official communications. This is explicitly confirmed by the "Principles", which read as follows: *"The application of such an obligation shall not restrict the parallel use of the language of a national minority for official communication in the territory of municipalities in which 20% of the population belong to the relevant national minority."*<sup>43</sup>

51. The Venice Commission welcomes this safeguard, but considers that it is not sufficient.

52. It recalls that the Slovak Republic has undertaken, under Article 10-1-a-iii) and iv) of the Charter, *"within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language (...) as far as this is reasonably possible (...) to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or to ensure that users of regional or minority languages may submit oral or written applications in these languages (...)."*

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<sup>42</sup> See more specifically article 10, § 2 "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities."

<sup>43</sup> Principles, p. 9. As the OSCE High Commissioner rightly pointed out: "When read systematically, it is clear that the extension of the scope of application of the Law does not (and cannot) imply a restriction of the linguistic rights of persons belonging to national minorities. However, if narrowly (and wrongly) interpreted, the provision might be used as an indirect tool to undermine the linguistic rights of national minorities as provided for in other pieces of Slovak legislation. For example art. 3.2. employees, civil servants and those employed in the transport, postal and telecommunication services (plus armed forces and security forces) "must have a command and use the state language in official communication." A systematic and constitutionally conform reading leads to exclude that the communication between e.g. a bus driver and a passenger has necessarily to take place in the State language, as this would violate inter alia the principle of non-discrimination on ethnic grounds laid down in the Slovak constitution. The formulation of the text might raise concerns among persons belonging to national minorities. This examples show that the amendments have not improved the clarity of the State Language Law thus avoiding to the extent possible divergent interpretations Moreover it proves the necessity to address minority rights in a comprehensive holistic way. For Slovakia this means to update without any unnecessary delay the Law on National Minority Languages."

53. The obligation to use the Slovak language in areas where the national minorities do not reach the 20% threshold may therefore be problematic. As has been noted<sup>44</sup>, the possibility of using regional or minority languages in contacts with the public authorities only in areas in which 20% of the population belong to the relevant minority amounts to a territorial reservation which is incompatible with the Charter.

54. While the Charter does not set up a general right for users of regional or minority languages to demand the use of their language in their relations with the public authorities, they require the State to adopt a positive attitude towards the practice of a regional or minority language in contacts with the public administration and services whenever this is possible without excessive constraints on the part of the public authorities.

55. The Venice Commission notes and welcomes that the State Language Act has removed the obligation to prove sufficient command of the Slovak language in order to be able to join the civil service. It considers however that, in addition, possibilities should be provided in the State Language Act (and not only in the Principles) for civil servants to learn minority languages or to use interpreters, as far as this is reasonably possible.

56. The Venice Commission further stresses that special attention should be drawn to the implications of the prohibition of discrimination in this field.<sup>45</sup> In its judgment of 20 July 2000, in *Diergaardt et al. versus Namibia*<sup>46</sup>, the Human Rights Committee of the United Nations stated that a governmental instruction for civil servants not to reply to the written or oral communications including simple telephone conversations with the authorities in the Afrikaans language, even when they are perfectly capable of doing so, is a violation of Article 26 of International Convention on Civil and Political Rights. This decision implies that a State has to accept that when private individuals address themselves in a non-official language to the public authorities, their civil servants may voluntarily answer in their language, if they are capable of doing so. This case law of the Human Rights Committee on Article 26 of the International Convention on Civil and Political Rights is implicitly confirmed by the reservation “unless any international treaty promulgated by the law provides otherwise” and is explicitly confirmed in the “Principles”<sup>47</sup>, which read as follows: “*If a person in official communication with an employee ... does not have a command of the state language and is not obliged to have such a command ... and the employee or state employee wishes to use a language that the third party understands in official communication and if the use of such a language is not restricted by special regulations, the employee ... can use the other language.*”

57. In conclusion, the Venice Commission considers that the obligation to use the State Language Act should be imposed on public authorities (art. 3. 1) and their employees, civil servants and members, acting in their official capacity, only to the extent that this can be done without prejudice to the linguistic rights which private individuals can draw from the separate regulations or international treaties on human rights and on the protection of national minorities

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<sup>44</sup> See Report of the Committee of Experts on the European Charter For Regional or Minority Languages, ECRML(2009)8, para. 12.

<sup>45</sup> See e.g. HRC CCPR/CO/82/POL, § 20 related to Poland: “the Committee is concerned that current legislation does not allow linguistic minorities to use their own language when dealing with administrative authorities in areas where their number warrants. (art. 26 and 27)”

<sup>46</sup> Human Rights committee – communication no 760/1997, views of the committee, 25 July 2000 UN doc. A/55/40, vol II p.140 para. 10.10. “Claim that the lack of language legislation in Namibia has had a consequence that they have been denied the use of their mother tongue in administration, justice, education and public life. The government instructed civil servants not to reply to the written or oral communications including simple telephone conversations with the authorities in the Afrikaans language, even when they were perfectly capable of doing so. The Committee found that such instructions were intentionally targeted against the possibility to use Afrikaans when dealing with public authorities and as such a violation of Article 26 of International Convention on Civil and Political Rights. Note that the intention of this measure was to discriminate, an example of direct discrimination.” See also Alexander H.E. Morawa, “Minority Languages and Public Administration. A Comment on Issues Raised in *Diergaardt et al. v. Namibia*”, ECMI Working Paper 16, October 2002. (<http://www.ecmi.de>).

<sup>47</sup> Principles, p. 11-12.

(notably the European Charter for Regional or Minority Languages), irrespectively therefore of the mere criterion of the 20% threshold.

58. Article 3 (5) first paragraph, first sentence, of the State Language Act provides:

*“In official communication with the authorities and legal persons referred to in paragraph 1<sup>48</sup>, a natural or legal person shall use the state language, unless this Act, separate regulation or any international treaty promulgated by the law provides otherwise.”*

59. The Venice Commission notes that the words “a natural or legal person” in this paragraph imply that not only public officials, but also private individuals are obliged to use the state language in their official communication with the authorities and legal persons referred to in paragraph 1. Although these private individuals cannot be punished under the State Language Act<sup>49</sup>, the use of another language than the Slovak language in “official communication” is, as a principle, a breach of the law and therefore an illegal act.

60. In this respect, the Venice Commission observes that it is not clear what the words “official communication” mean as far as the relationship of private individuals and public authorities is concerned. In a broad interpretation, article 3 (5) might be applicable to all communications, both written and oral. It could stretch to communications between civil servants even if such communication has merely internal, organisational purposes. As paragraph 5 does not distinguish between citizens and non-citizens, article 3 (5) might even be read as imposing the use of the Slovak language on foreign visitors or tourists.

61. It should be noted that the Slovak authorities claim that this broad interpretation does not accurately reflect the intentions of the Slovak legislator. According to the Ministry of Culture, official communication *“is a synonym of the term “service communication”, which is used only in section 6(1) of the State Language Act to distinguish “internal” service communication in the armed forces and corps from any official communication, whether internal or external, as defined in section 3 of the State Language Act. The term public communication is not of normative significance; it is used only in the titles of section 5 and section 8 to refer to the social relations regulated by section 5 and 8 of the State Language Act. Two soldiers or police officers may freely speak in Hungarian together during active service provided that they are not engaged in service communication. Conversations between friends and discussion of private matters are not restricted by the State Language Act. The involvement of a third party is irrelevant to section 6(1). It applies only to section 3 of the State Language Act.”*<sup>50</sup>

62. In the Venice Commission’s opinion, Article 3 (5) first sentence, in this interpretation, does not add anything to the provisions under paragraph 1 and 2 of the same article, and instead may be interpreted in a more extensive manner which would be unwarranted. For this reason, the Commission considers that Article 3 (5), first sentence, should be repealed.

63. Finally, and in a subsidiary order, the Venice Commission has examined the second sentence of Article 3 (5) of the State Language Act, which reads as follows: *“Any person whose mother tongue is a language that meets the criterion of basic comprehensibility in relation to the state language may use their mother tongue in official communication with the authorities and legal persons”*. This criterion refers to the Czech language and implies that the use of this language will also be permitted in official communication.<sup>51</sup>

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<sup>48</sup> Art. 3 (1) “The state authorities, authorities of municipal administration, other bodies of public administration, the legal persons founded by such public authorities and the legal persons established by the operation of law”

<sup>49</sup> Article 9a only gives the Ministry of Culture the competence of imposing a fine of 100 to 5000 EUR on “the authorities and legal persons referred to in par. 3(1)<sup>49</sup> or the natural persons-entrepreneurs and legal persons”.

<sup>50</sup> see CDL(2010)078.

<sup>51</sup> See Principles, p. 12.

64. The Venice Commission shares the opinion of the OSCE High Commissioner, according to which “[t]his criterion might raise issues of differential treatment of minority languages based on the assumption that Czech enjoys a status others do not have: the Czech language is recognized as a minority language by Slovak legislation but is seen as a “mutually understandable language”. This criterion, however, seems important for functional reasons, as it addresses a practical problem and is based on the uncontested similarity between the Czech and Slovak languages. It therefore appears to be sufficiently grounded, proportionate and therefore in line with the non-discrimination requirements and could actually serve as a valuable comparative reference point for similar situations in the OSCE area.”<sup>52</sup>

#### B. State Language and Religion (article 3 par. 3)

65. The State Language Act does not regulate the use of liturgical languages. Article 1 (3) provides explicitly: “This Act does not regulate the use of liturgical languages. The use of such languages is governed by the regulations of churches and religious communities”.<sup>53</sup> Article 3 (3) provides, however, that the State language shall be the language of “all official records (birth registers, protocols, resolutions, statistics, registers, balances, official records, information for the public, etc.) and the records and documents of churches and religious communities intended for the public.”

66. As for the “official records”, it is to be remembered that principle 5 of the Oslo Recommendations regarding Linguistic Rights of National Minorities (1998) acknowledges that the State may require that certificates and documents issued by religious authorities which also pertain to civil status and which have legal effect be kept also in the official language of the State.

67. The Venice Commission agrees with the OSCE High Commissioner that this legitimate requirement must not extend beyond what is strictly necessary for registry purposes.

68. As for the “information to the public” and for “the records and documents of churches and religious communities intended for the public”, article 3 (3) seems to imply that church announcements to the public will have to be made in the Slovak language. The sub-paragraph does not make an exception for “to the use of the languages of national minorities in official communication pursuant to a separate regulation”. It makes no distinction with respect to municipalities in which a national minority makes up at least 20 per cent of the population. It does not contain the reservation “unless this Act, separate regulation or any international treaty promulgated by the law provides otherwise”.

69. If article 3 (3) implies that only the Slovak language may be used for the information, the records and the documents that churches and religious communities want to communicate to the public, this article violates several rights guaranteed in the international treaties on human rights and minority rights, more specifically:

- the right to freedom of religion, as this implies the right “either alone or in community with others, and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” (art. 9 ECHR)
- the right, in those States in which ethnic, religious or linguistic minorities exist, of persons belonging to such minorities, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. (art. 27 ICCPR)

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<sup>52</sup> Opinion of the OSCE High Commissioner on National Minorities on amendments to the “Law on the State Language of the Slovak Republic.”, 22 July 2009, p. 5.

<sup>53</sup> Act. No 308/1991 on the Freedom of Religious Belief and on the Position of Churches and Religious Associations.

- the right of every person belonging a national minority to manifest his or her religion or belief (art. 8 FCPNM)

70. If article 3 (3) imposes the use of the Slovak language, in addition to the use of the language the church or the religious community freely chooses, only for churches' communication to the public, it is clear that this obligation could place a heavy burden on the church authorities of national minorities, one not borne by church authorities who use the Slovak language as their mother tongue.

71. In order to be in compliance with the principle of non-discrimination, this unequal treatment has to serve a legitimate aim and has to respect the principle of proportionality.

72. The Venice Commission considers that in principle it is proportionate to demand the use of the Slovak language in these documents when stringent reasons of public order so require. This might not be the case for all the "information to the public" and all "the records and documents of churches and religious communities intended for the public". Should the State desire or consider necessary to have all this kind of documents available also in Slovak, even when this is not justified for public order needs, the Venice Commission considers that additional administrative or financial means should be provided in order to have the texts translated.

#### C. State Language in the Educational System (article 4)

73. According to article 4 of the State Language Act, the use of the state language in the educational system is mandatory. A language other than the state language may be used as the language of instruction and testing to the extent laid down in separate regulations.

74. This exception refers to par. 12, 5 of the Act No 245/2008 on Education and Training (Schools Act). On the basis of this Act, the right to education in one's mother tongue is provided by means of a whole network of primary and secondary schools and pre-school facilities with teaching in a national minority language<sup>54</sup>. Act no. 465/2003 Coll. established the University of J. Selye in Komarno providing all education in the Hungarian language.

75. The Venice Commission considers the network of schools in minority languages which exists in the Slovak Republic to be very developed and welcomes the positive attitude of the authorities towards education in minority languages.

76. Article 4 (3), second and third sentence, of the State Language Act provides:

*"In the schools and school institutions, providing upbringing and education in the language of national minorities, the entire pedagogical documentation shall be kept bilingual, it means in the state language and language of national minority. In the schools and school institutions providing upbringing and education in the language of national minorities, other documentation shall be kept bilingual, it means in the state language of national minority."*

77. The obligation to keep the so-called "other documentation" also bilingual was newly introduced by the 2009 amendments to the State Language Act. The terms "pedagogical documentation" and "other documentation" are defined very broadly in the "Principles":

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<sup>54</sup> In the case of the Hungarian national minority more than 700 such facilities operate in Slovakia (all classes are taught in Hungarian). See Ministry of Culture of the Slovak Republic, "The language act and the rights of persons belonging to national minorities in Slovakia. Commentary," August 2009; see also the charts in CDL(2010)078, Replies by the Minister of Education.

*“Pedagogical documentation of a school or school establishment shall mean the set of written documents used to manage upbringing and education processes, and the set of documents on the basis of which a school or school establishment issues public upbringing plans, teaching schemes, upbringing schemes, educational standards, upbringing standards, the class book, the class report, a child’s record card, a pupil’s record card, a child’s personal file, a pupil’s personal file, a maturita (secondary school graduation) examination report, a final examination report, an absolutorium (secondary school leaving) report, reports on commission tests, the journal of a school establishment, the timetable, the report on a state language exam, school rules in a school, school rules in a school establishment, a plan of upbringing and educational activity, school work plan, school establishment work plan, journal of an upbringing group, thematic upbringing and education plans in individual subjects.”*

*“Other documentation in a school or school establishment shall mean the set of documents that support the organization and management of schools and school establishments. Other documentation shall comprise a recommendation for placement of a pupil with special upbringing and educational needs in a special school, special nursery school, elementary school or secondary school, a report on a psychological or special-pedagogical examination, a written opinion on school placement, an individual upbringing and educational program for an individually placed pupil, the statute of a school establishment, organizational regulations, the list of schools and school establishments that a school establishment cooperates with, minutes of the sessions of the pedagogical council, the subject commission and the methodological association and sessions of the upbringing commission, the overview timetable for the whole school and individual classes, documentation relating to optional subjects and free time activities, records relating to the organization of school trips and visits, skiing and swimming exercises, outdoor activities holidays and other activities, the annual plan for control activity by the director and deputy director, records of inspections and other control activity, the summary of the use of funds provided by the owner for the needs of the school and the upbringing and education process, gifts from sponsors and other gifts, the summary of the scope of upbringing and educational activities of employees and the professional skills of teachers and leaders of school clubs for children, the summary of continuing training for teaching and non-teaching staff including training relating to occupational health and safety, the rules of procedure of the pedagogical council, the work regulations for employees, records of pupils’ accidents in schools, records of complaints, filing regulations, the collective agreement.”*

78. Moreover, article 4, (3) of the State Language Act also applies to higher education, with the exception of “the use of textbooks and teaching texts at the universities” (art. 4, (5), *in fine*).

79. The said written “pedagogical documents” and “other documents” are subject not only to supervision by the Ministry of Culture under section 9 of the State Language Act, but also to the supervision of the competent authorities, such as the State Schools Inspectorate.

80. Although the above-mentioned provisions do not restrict the right of minority schools to use the minority language for both the “pedagogical documentation” and the “other documentation”, the obligation to keep this documentation bilingual implies that this documentation will also have to be drawn up in or translated into the Slovak language. It is clear that this obligation places a heavy burden on the minority schools, which does not rest on the other schools. In order to be in compliance with the principal of non-discrimination, this unequal treatment of minority schools has to serve a legitimate aim and has to respect the principle of proportionality.

81. The obligation for minority schools to keep the “pedagogical documentation” and the “other documentation” bilingual serves a legitimate aim of public order, as it makes possible



supervision by state bodies of the education in minority-language schools, in the interest not only of the State but *in primis* of the pupils and students.

82. However, as the obligation to keep the documentation bilingual applies to virtually any document relating to the activities of the school, the question arises as to whether this obligation is proportionate to the aim pursued. The fulfilment of this obligation represents an additional financial burden for the minority-language schools, even though, according to the Ministry of Culture, it must not be overestimated.<sup>55</sup>

83. In addition, it surely implies an additional workload for the administrative and teaching staff of these schools, since they will have to devote time and effort to producing an adequate translation of this long list of both pedagogical and “other” documents. This does not appear to encourage and support teaching in the minority languages as required by the European Charter for Regional or Minority Languages. Indeed, this obligation to keep all documents in Slovak might prompt the administrative and teaching staff, in order to save time and resources, to keep them in Slovak only.

84. In the Venice Commission’s opinion, this obligation may legitimately be imposed, but should be limited to those documents which are necessary in order to render the inspection of the minority language schools possible. This provision should therefore be reconsidered. It might be appropriate to allocate additional administrative or financial means in order to have the translations established, as provided in the Principles. The Commission further considers that a possible alternative for exercising the supervision would be to provide that a school inspector supervising a minority-language school must also have a command of the school’s language of instruction.

#### D. State Language in certain areas of Public Communication (Article 5)

85. Article 5 of the State Language Act requires the use of the state language in certain areas of public communication.

##### a) Broadcast of the radio and television service

86. Paragraph 1 of Article 5 stipulates that the radio and television services in the territory of the Slovak Republic must broadcast in the State language unless they are immediately rebroadcast in the state language, but makes an exception for radio programmes in regional broadcasted or local broadcast designed for members of the national minorities, including events in live transmissions, and for programmes in the language of national minorities and ethnic groups broadcast by the Slovak Radio.

87. In this respect, the Venice Commission finds that, in principle, bilingual broadcasting allows the majority population without command of the minority languages to have access to programmes of the minority population, thus raising awareness on minority cultures. As such, the requirement to broadcast also in the State language pursues a legitimate aim. However, this requirement entails additional costs which must not be such as preventing or discouraging national minorities broadcasts. A reasonable relationship of proportionality must exist. The degree of protection of the state language should depend also on the attitude of the national minorities.

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<sup>55</sup> See Ministry of Culture of the Slovak Republic, “The language act and the rights of persons belonging to national minorities in Slovakia. Commentary,” August 2009, p. 8: “Practice over several years has confirmed that the costs for translating school documentation into the state language and vice versa do not represent any extraordinary financial burden in a bilingual environment”.

88. The Venice Commission welcomes the expansion of the scope for the use of minority languages in radio broadcast.<sup>56</sup>

89. As concerns television, the Commission notes that there is no such exception; as a consequence, it is possible that the burden imposed on minority broadcasters may become disproportionately heavy. In particular, the Commission does not find that the Slovak language is threatened by the minority languages in such a way as to require such a radical attitude towards minority broadcasting. For this reason, the Commission finds that, if the Slovak authorities wish to have total bilingualism, it might be appropriate that the State itself should provide adequate financial funds for the dubbing or subtitling of programmes.

90. The Commission finds that, in order to assess the impact of this requirement, the role and the limitations of broadcast media in minority languages need to be spelled out more clearly, especially as opposed to the rules on the use of foreign languages which are not minority languages.

b) The use of the state language in cultural activities

91. Article 5, par. 5 and 6, of the State Language Act reflects, in the field of cultural activities, the overall intention to strengthen the protection of the State language. According to paragraph 5, *“occasional book posts (booklets), designed for publicity for cultural purposes, catalogues for galleries, museums and libraries, programmes for the cinema, theatres, concerts and other cultural events are issued in the state language. They may also be issued in the language of national minorities, but then they must “contain also a content-wise identical version in the state language.”* These book posts, catalogues and programmes may also contain versions in other languages *“in the necessary range which are basically content-wise identical to the version in the state language and follow after the version in the state language.”* According to paragraph 6 *“cultural and educational events shall be held in the state language, except for the cultural events of national minorities and ethnic groups, cultural events of hosting artists from abroad and educational events focusing on language training, as well as musical works and theatre plays with original texts. The accompanying verbal presentation of these programmes shall be performed also in the state language, except for the verbal presentation of the programmes referred to in the second sentence of this paragraph, provided that such programmes are held in a language that meets the criterion of comprehensibility in relation to the state language.”*

92. Although these provisions explicitly recognise the right to use minority languages and other languages in cultural events and for the information on these events, the obligation to use the Slovak language also for this information and for the verbal presentation imposes additional work and costs on the organisers of cultural events in a minority language or another foreign language.

93. This additional burden does not rest on the organisers of cultural events in the Slovak language. In order to be in compliance with the principle of non-discrimination, this unequal treatment has to serve a legitimate aim and has to respect the principle of proportionality. The obligation to provide information on cultural events (publicity, catalogues, programmes, etc.) and to provide a verbal presentation of these events in the Slovak language, serves a legitimate aim, as it makes it possible to inform persons belonging to the Slovak majority of cultural events which although in the first place intended for national minorities, are open to the general public.

94. This legitimate aim, however, must be proportionate, including to the extent of the interest which the Slovak majority may have in following minor expressions and manifestations of the life of the minorities. Indeed, it is not excluded that cultural events in minority languages will

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<sup>56</sup> Article 5 enables inter alia the sole use of the minority language in radio programmes and in television programmes with subtitles in the state language. (see Article 5, par. 1 to 3).

often appeal to few Slovak-speaking persons. In order to comply with the principle of proportionality, the Slovakian Government should therefore consider providing public funding for translation into the Slovak language, as the financial burden might cause substantial disruption and could have a chilling effect on the organisation of cultural events in minority and foreign languages.

c) The use of the state language on monuments

95. Art. 5 (7) of the State Language Act provides that *“inscriptions on monuments, memorials and memorial plaques shall be in the state language. If they contain the text in other languages, the texts in another language shall be presented after the text in the state language and shall, in terms of their content, be identical with the state language text. The text in another language shall be presented in the same or smaller font than the state language text. A construction permit holder shall be obliged to request a binding opinion from the Ministry of Culture on compliance with this Act of the inscription on a memorial, monument or a memorial plaque. This provision does not apply to historic inscriptions on memorials, monuments and memorial plaques which are subject to protection under a separate regulation. (e.g. protection of historic monuments)”*.

96. This provision seems to imply that centuries-old inscriptions on monuments will have to be translated. According to the Ministry of Culture’s information sheet, however, the Ministry shall not supervise historical inscriptions “placed on objects of particular cultural value more than 50 years old” and shall primarily focus on new inscriptions because older inscriptions should already have been adjusted pursuant to par. 11 of the act that was in force until 1 January 1997. For purposes of legal certainty, it is advisable to have the time limit of 50 years inserted into the law itself.

97. According to point 8.7. of the “Principles”: *“Gravestones, grave slabs and grave markers shall not be considered memorials or monuments.”* For purposes of legal certainty it is advisable to have this exception also inserted into the law itself.

E. State Language in the Armed Forces, Armed Corps and Fire Brigades (Article 6)

98. Article 6 of the State Language Act provides: *“All service communication in the armed forces, Police Force, Slovakian Intelligence Service, Prison and Justice Guard Corps, Railways Police, Fire and Rescue and Rescue Corps and in municipal police corps shall be compulsory in the state language.”*

99. The “Principles” (art. 3 ad) clarify this provision as follows: *“Service communication shall mean official communication in the performance of service activities and actions by the organisations listed in section 6 (1) of the State Language Act. The term service communication shall be used to emphasise the service character of the official activities of the subjects listed in section 6 (1) of the State Language Act.”* The document further explains: *“Internal service communication within the armed forces of the Slovak Republic, the Police Force, the Slovak Information Service, the Prison and Judicial Guard Corps of the Slovak Republic, the Railway Police, the Fire and Rescue Service and municipal police forces shall take place only in the state language.”*

100. Both the notions of “(internal) service communication” and “official communication” need to be further elucidated. Do these notions apply both to written and to oral communication? To what extent do they apply to conversations on service activities between members of the organisations listed in section 6 (1)? Does the obligation to use the Slovak language in “service communication” and in “official communication” also apply in the municipalities where the minority represents at least 20% of the overall population and to what extent does this imply that the members of the organisations listed in section 6 (1) who belong to this national minority

are precluded from using the minority language in their written communications and in their oral conversations on service matters?

101. Further questions arise: to what extent does the notion of “official communication” apply to written and oral announcements to the public made by the members belonging to the organisations listed in section 6 (1)? To what extent is the use of the Slovak language also mandatory in the relationship between e.g. the local police, fire brigade and the rescue corps and the public? In order to be able to guarantee the public service they are responsible for, it is clear that, at least in the municipalities where the minority represents at least 20% of the population, some of the members belonging to these services should be capable of communicating with minorities in minority languages.<sup>57</sup> This provision should be reconsidered.

F. State Language in Judicial Proceedings, Administrative Proceedings and Proceedings before Law Enforcement Authorities (Article 7)

102. Article 7 of the State Language Act provides that *“Mutual communication between courts and citizens, communication in judicial proceedings, administrative proceedings, proceedings before law enforcement authorities, as well as the rulings and minutes of courts, administrative authorities and law enforcement authorities, shall be performed and issued in the state language (...) without prejudice to the rights of the persons belonging to national minorities and ethnic groups and the rights of the persons who do not have command of the state language, as laid down in separate regulations.*

103. The “separate regulation” referred to consists in the codes of criminal and civil procedure of the Slovak Republic, which provide for the right to the assistance of an interpreter in criminal and even civil proceedings, but only in case of insufficient knowledge of the Slovak language.

104. The right for everyone charged with a criminal offence “to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him”; and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court” are minimum rights in the context of the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights. The recognition of the right to the assistance of an interpreter in criminal and even in civil proceedings is therefore to be welcomed.

105. The Venice Commission recalls however that the Slovak authorities have undertaken pursuant to Article 9 of the Charter [...] *in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:*

- a *in criminal proceedings:*
  - i *to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or*
  - ii *to guarantee the accused the right to use his/her regional or minority language; and/or*
  - iii *to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or*

<sup>57</sup> See also recommendation 13 of the HCNM “Recommendations on Policing in Multi-Ethnic Societies”, namely that police should “ensure that they have the capability to communicate with minorities in minority languages, wherever possible by recruitment and training of multilingual staff, and also by use of qualified interpreters.”

*iv to produce, on request, documents connected with legal proceedings in the relevant regional or minority language, if necessary by the use of interpreters and translations involving no extra expense for the persons concerned;*

*b in civil proceedings:*

*i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or*

*ii to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or*

*iii to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations;*

*c in proceedings before courts concerning administrative matters:*

*i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or*

*ii to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or*

*iii to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations;*

*d to take steps to ensure that the application of sub-paragraphs i and iii of paragraphs b and c above and any necessary use of interpreters and translations does not involve extra expense for the persons concerned.*

106. These rights go clearly beyond the right to the assistance of an interpreter, and they apply to minority language users irrespective of their knowledge of the Slovak language. The Venice Commission considers therefore that Article 7 of the State Language Law is at variance with the European Charter for Regional or Minority Languages.

#### G. State Language in other areas of Public Communication (Article 8)

107. Article 8 of the State Language Act contains several provisions on the “use of the State Language in other areas of public communication”.

108. The Venice Commission recalls in this respect that under Article 13(1) a) of the European Charter for Regional or Minority Languages the Slovak Republic has undertaken “*to eliminate from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages in documents relating to economic or social life, particularly contracts of employment, and in technical documents such as instructions for the use of products or installations*”.

##### a) Consumer protection

109. Article 8 (1) of the Act provides: “*In the interest of consumer protection the use of the state language shall be mandatory in the labelling particulars of products whether domestic or imported, in instructions for the use of products, particularly foodstuffs, medicinal products, consumption electronic and drugstore goods, in warranty terms and conditions, as well as other information for the consumer.*”

110. Insofar as the aim of this provision is not to impose the official language exclusively but only to require that the use of the official language be a minimal requirement, it does not infringe on the freedom of expression guaranteed *inter alia* under article 19 of the International Covenant on Civic and Political Rights. In *Ballantyne, Davidson and McIntyre v. Canada*<sup>58</sup>, the

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<sup>58</sup> CCPR, *Ballantyne, Davidson, McIntyre v. Canada*, 5 May 1993, Communications Nos. 359/1989 and 385/1989, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993).

United Nations Human Rights Committee indicated that public authorities cannot ban the use of a particular language in commercial communication but suggested that it may be permissible for public authorities to require that an official language be used in addition to, but not excluding or obstructing, the language of preference.

#### b) Employment

111. Article 8 (2) of the Act provides: *“All documents and written communication with legal effect in employment or a similar working relationship shall be executed in the state language; other language mutations of the text in the state language of identical content may also be executed.”* This provision imposes the use of the Slovak language, without precluding the use of another language.

112. The Venice Commission welcomes this new possibility of using another language. As regards the obligation to draft in the Slovak language, it considers that it should only concern those documents and written communications, access to which is indispensable for public order aims. Otherwise, this requirement would be in breach of Article 13 of the Charter, in particular when both parties belong to a national minority in a municipality where the minority represents at least 20% of the overall population. The Commission also recalls that under Article 9 para. 2 of the Charter, the Slovak authorities have committed themselves to the following:

*a not to deny the validity of legal documents drawn up within the State solely because they are drafted in a regional or minority language; or*

*b not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language, and to provide that they can be invoked against interested third parties who are not users of these languages on condition that the contents of the document are made known to them by the person(s) who invoke(s) it; or*

*c not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language.*

#### c) Associations and corporations

113. Article 8 (3) of the Act provides: *“The financial and technical documentation, bylaws of associations, societies, political parties, political movements and companies shall be executed in the state language; other language mutations of the text in the state language of identical content may also be executed.”* This provision is similar to the previous one and imposes the use of the Slovak language, without precluding the use of another language.

114. The Venice Commission welcomes the new possibility of using another language in addition to the official one. It considers that the obligation to use the official language should be confined to those documents and communications which must be accessible to the State authorities for public order needs. Particular attention, in this respect should be given to cases when all the members belong to a national minority in a municipality where the minority represents at least 20% of the overall population.

#### H. Health Care and Social Services

115. Article 8 (4) of the State Language Act provides: *“1. The administrative paperwork of healthcare facilities and facilities for social services shall be kept in the state language. 2. The personnel of these facilities communicate with their patients or clients usually in the state language: if a patient or client does not have a command of the state language, the communication may be in a language in which the patient or client can communicate. 3. If the facility is located in a municipality where the language of a national minority is used in official communication pursuant to a separate regulation, the patients or clients belonging to that*

*national minority may use their mother tongue in communication with the personnel. The personnel are not obliged to speak the language of the national minority.”*

116. In the “Principles”, this provision is clarified as follows: *“No public administration authority shall supervise the use of the state language, the languages of national minorities or foreign languages in communication between staff and patients or clients in healthcare facilities and social services facilities. If a patient or client does not have a command of the state language, staff can communicate with the patient or client in the language of a national minority or a foreign language anywhere in the territory of the Slovak Republic. Communication between staff and patients can also be conducted in the language of a national minority when a patient or client is a member of a national minority with a command of the state language and communication takes place in a healthcare facility or social service facility in a municipality where members of the national minority make up at least 20% of the population. In exceptional circumstances, staff can also communicate with a patient or client in the language or a national minority or a foreign language where the patient or client has a command of the state language and is not a member of a national minority whose members make up at least 20% of the population of the municipality if it is more effective to use the language of the national minority or the foreign language and the member of staff has a command of the language used at a reasonable professional level and the member of the staff and the patient or client explicitly stress a wish to communicate in the language of a national minority or a foreign language. Staff members shall not be obliged to have a command of the language of a national minority and if they have a command of the language of a national minority they cannot be ordered to use it in communication with clients or patients.”*

117. It follows from a combined reading of the text of Article 8 (4) of the State Language Act and the “Principles” that in three situations another language than the state language can be used in the communication with the patient, more specifically:

- when the patient does not have a command of the state language;
- when the patient has a command of the state language, but is a member of a national minority and the communication takes place in a healthcare facility or social service facility in a municipality where members of the national minority make up at least 20% of the population;
- when the patient has a command of the state language and is not a member of a national minority whose members make up at least 20% of the population of the municipality, in exceptional circumstances “if it is more effective to use the language of the national minority or the foreign language and the member of staff has a command of the language used at a reasonable professional level and the member of the staff and the patient or client explicitly stress a wish to communicate in the language of a national minority or a foreign language.”

118. The Venice Commission recalls that pursuant to Article 13 (2) c) of the Charter, the Slovak Republic has undertaken *“to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons”*.

119. The Venice Commission welcomes the expansion of the possibility of using the minority language. It notes however that the third possibility (see para. 117) is only reflected in the “Principles”. For purposes of legal certainty, it is appropriate to have it inserted into the text of article 8 (4) of the State Language Act.

### I. Contracts

120. Article 8 (5) of the State Language Act provides: *“In proceedings before the authorities and legal persons referred to in par. 3 (1) concerning contracts, only the state language version of the contracts shall be recognised”*.

121. The Venice Commission recalls the obligations which are incumbent on the Slovak authorities pursuant to Article 9 para. 2 of the Charter (see above, para. 112 *in fine*). It finds that the non-recognition of contracts drafted in minority languages is in breach of these obligations.

### J. Public communication of private persons

122. Article 8 (6) of the State Language Act provides: “All signs, advertisements and notices intended to inform the public, particularly in retail shops, sporting facilities, restaurants, in streets, by and above roads, at airports, bus stations and railway stations, as well as in public transport vehicles, shall be presented in the state language. If they contain the text in other languages, the texts in another language shall be presented after the text in the state language and shall, in terms of content, be identical with the state language text. The text in another language shall be presented in the same or smaller font than the state language text.

123. In the “Principles”, this provision is clarified as follows: *“The Ministry of Culture shall supervise only advertising whose purpose is not to present goods, services, real estate, a business name, a trade mark, a label of product origin or other rights and obligations relating to business in any form in order to place them in the market. The Ministry of Culture shall supervise signs identifying the seat of a legal entity, the permanent residence of a natural person, signs for buildings, land and other immovable or movable property owned by such persons other than signs identifying operational facilities or organisational units of a legal entity or natural person by means of a business name. Business names, trademarks and the names of institutions registered in accordance with the law, and personal forenames and surnames need not be given in the state language in signs, advertisements or notices intended to inform the public.”*

124. Although Article 8 (6) only imposes the use of the Slovak language, in addition to the use of the language the individual prefers to use, for “signs, advertisements and notices intended to inform the public”, it is clear that this obligation could imply a heavy burden on all those who want to communicate with the public, as these communications will have to be translated and will have to be presented to the public in a bilingual way. The effects of requiring that the Slovak language be used on all “signs, advertisements and notices intended to inform the public” could be so onerous in some situations as to have a chilling effect on the exercise of the freedom of expression.

125. The Venice Commission therefore welcomes the intention expressed in the “Principles” to have the provision applied restrictively, only to non-commercial communication. For purposes of legal certainty it is advisable to have this intention reflected in the text of article 8 (6) of the State Language Act.

126. Moreover, the Venice Commission invites the Slovak Authorities to re-examine the provision in the light of the principle of proportionality and to assess to what extent bilingualism has to be compulsory even in municipalities with an almost exclusively minority population.

### K. Supervision and fines (Articles 9 and 9a)

127. The obligations arising out of the law are monitored by the Ministry of Culture. Breaches of these obligations lead, if they are not removed or remedied within a set time-limit, lead to the imposition of fines.



128. The supervision and imposition of fines is one of the most sensitive and complex questions raised by the Slovak State Language Law. The State Language Law contained provisions on the imposition of fines in its original version, but these provisions had been removed in 1999, before being reintroduced by the amendments of 2009.

129. It is clear that no fine should be imposed for those breaches of the State Language Law which represent legitimate expressions of the right to use a minority language as guaranteed not only by the applicable Slovak legislation, but also and in primis by the international treaties which the Slovak Republic has ratified and which prevail over ordinary legislation, including the State Language Law. This concerns in the first place the European Charter for Regional and Minority languages and the Framework Convention for the Protection of National Minorities.

130. As concerns other irregularities, the Venice Commission agrees with the Slovak authorities that legal obligations, in the absence of sanctions, run the risk of being ignored. As the Slovak authorities attach great importance to the application of this law, they feel that they need to provide it with some "teeth". It is true that it is logical that in principle breaches of the law should be sanctioned. The Slovak authorities in addition claim that these sanctions have a deterrent effect (no sanction seems to have ever been imposed).

131. It remains to be seen whether, assuming that it is desirable, it is useful to provide for sanctions for breaches of the duty to use the official language. In this respect the Commission observes that the possibility of removing or remedying the irregularity does not apply to all cases, notably to those relating to the media and the cultural activities (how can the failure to translate the advertisement for a past cultural event be removed or remedied?). But irrespective of this, the Slovak authorities have made clear that the aim of the whole system of sanctions is not the punishment of those who have committed irregularities but the correct application of the law, that is to say the broad use, in parallel with minority languages in certain cases and areas, of the official language of the State. In the Commission's opinion, this aim would be more efficiently reached through co-operation and confidence-building measures or measures aimed at achieving the objectives required by the Act rather than through sanctions. The latter should be left, if at all, for the most extreme cases.

## **VI. Conclusions**

132. The protection and promotion of the official language of the state is a legitimate concern common to many European countries. It pursues several legitimate aims; it protects *in primis* public order, by ensuring that the State may have access to essential information and communication in its territory and may intervene where appropriate and be held fully accountable. It guarantees the development of the identity of the State community, and further ensures mutual communication among and within the constituent parts of the populations. It avoids that citizens may suffer discrimination in the enjoyment of their fundamental rights in areas where the persons belonging to national minorities have a majority position.

133. Protection and promotion of the state language also promotes social cohesion and integration of national minorities and helps avoiding that persons belonging to minorities be confined to specific geographical areas where the relevant minority language is spoken, which might limit the possibility for them, if they so wish, to circulate and settle down anywhere within the territory of the state in order to pursue their professional and personal development.

134. Protection and promotion of the state language must be balanced against protection and promotion of the linguistic rights of persons belonging to national minorities. These rights are guaranteed and protected at the international as well as at the national level. The right of the majority of the population to speak the official language and the right of persons belonging to minorities to use their minority language are compatible and may co-exist with each other

without conflict, provided that a positive approach is taken by both the majority and the minorities towards each other. The obligation to use the official language should be confined to genuine cases of public order needs and bear a reasonable relation of proportionality; the extent of public order need may depend on the attitude of the national minorities. In other cases where the State deems necessary or appropriate or desirable to ensure the use of the state language in addition to minority languages, it should provide adequate facilities and financial means.

135. The Venice Commission has examined the State Language Act of the Slovak Republic, as amended in 2009 and as complemented by the "Principles" of the Slovak Government. It considers that it pursues the legitimate aims exposed above. It considers nevertheless that, for reasons of legal certainty, the relations of the Slovak Language Act with other pieces of legislation on minority protection as well as the legal status of the "Principles" should be clarified. Several "principles" should be contained in the law.

136. The Venice Commission further finds that certain provisions of the Act are incompatible with the international obligations which the Slovak Republic has undertaken and as such should be revised. These provisions relate: to the obligation to use the state language in official communication in areas where the minority population does not reach the threshold of 20%; to the duty for private persons to use of the official language in contacts with the authorities; to the obligation to use the state language in judicial proceedings, administrative proceedings and proceedings before law-enforcement authorities if one has sufficient command of it and to the non-recognition of contracts drafted in minority languages.

137. The Venice Commission finally considers that certain measures of promotion and protection of the state language, as they are currently formulated in the State Language Act, should be carefully examined and possibly revised so as to avoid that their impact be disproportionate. These provisions relate: to the duty to use the State language in all official records and documents of churches and religious communities intended for the public; to the duty for minority schools to keep all pedagogical and other documents also in the state language; to the rules on television broadcasting; to the duty to use the state language in cultural activities; to the duty to use the state language in the Armed Forces, Armed Corps and Fire Brigades; to the duty to use the state language in documents and written statements with legal effect in employment and other working relations; to the duty to keep in the state language financial and technical documentation and bylaws of associations, societies, political parties, political movements and companies; to the duty for private persons to present all signs, advertisements and notices intended for the public in the state language, and to the system of fines.

138. The Venice Commission remains at the disposal of the Slovak Republic, should they wish assistance in this respect.