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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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(VENICE COMMISSION)

SLOVAK REPUBLIC

URGENT OPINION

ON THE DRAFT AMENDMENTS TO THE CONSTITUTION

Issued on 24 September 2025
pursuant to Article 14a of the Venice Commission's
Revised Rules of Procedure

on the basis of comments by

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Table of Contents

I.	Introduction	3
II.	Background and content of the draft amendments to the Constitution	3
III.	Analysis	4
A.	Law-making process	4
B.	International standards	7
C.	National sovereignty and constitutional supremacy	8
D.	Family Law, Parental Rights, and Education	12
1.	Surrogacy	12
2.	Adoption	12
3.	Education	14
E.	Gender, Sex and Equality	15
1.	Gender identity	15
2.	Equal pay	16
IV.	Conclusion	17

I. Introduction

1. By letter of 23 June 2025, the Chairperson of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, Ms Zanda Kalniņa-Lukaševica, requested an urgent opinion of the Venice Commission of the Council of Europe on the draft amendments to the Constitution of the Slovak Republic.

2. On 30 June 2025, the Bureau of the Venice Commission authorised the preparation of the Opinion through the urgent procedure, pursuant to Article 14a of the Commission's Revised Rules of Procedure.

3. On 10 July 2025, the Slovak authorities provided the Secretariat with the text of the Draft constitutional law amending the Constitution of the Slovak Republic No 460/1992 Coll. as amended and explanatory memorandum thereto ([CDL-REF\(2025\)035](#)). On 20 August 2025, the Venice Commission received a revised version of the draft amendments to the Constitution ([CDL-REF\(2025\)035rev](#)) – hereinafter, the "draft amendments to the Constitution", which forms the basis for this Urgent Opinion.

4. Ms Veronika Bílková, Mr Eirik Holmøyvik and Ms Angelika Nussberger acted as rapporteurs for this Urgent Opinion.

5. On 21 and 22 August 2025, the rapporteurs, accompanied by Ms Freymann and Mr Longurashvili from the Secretariat, travelled to Bratislava and had meetings with the representatives of the Government Office, the Ministry of Justice, the Ministry of Education, Research, Development and the Ministry of Labour, Social Affairs and Family, the Public Defender of Rights, the Constitutional Court, representatives of the international community and civil society organisations. Additional online meetings took place on 11 September 2025 with representatives of the parliamentary majority coalition and representatives of the parliamentary opposition. The Commission is grateful to the Slovak authorities for their excellent support in organising the meetings. Further to the meetings, written comments were submitted by some interlocutors. The Commission is grateful to the interlocutors for their input.

6. This Urgent Opinion was prepared in reliance on the English translation of the draft amendments to the Constitution and the explanatory memorandum thereto. The translation may not accurately reflect the original version on all points.

7. This Urgent Opinion was drafted on the basis of comments by the rapporteurs as well as the results of the meetings held on 21 and 22 August 2025 in Bratislava and the online meetings held on 11 September 2025. In line with paragraph 10 of the Venice Commission's Protocol on the preparation of Urgent Opinions (CDL-AD(2018)019), the draft Urgent Opinion was transmitted to the authorities of the Slovak Republic on 19 September 2025 for comments. It was issued on 24 September 2025, pursuant to Article 14a of the Venice Commission's Revised Rules of Procedure. It will be submitted to the Commission for endorsement at its 144th Plenary Session (Venice, 9-10 October 2025).

II. Background and content of the draft amendments to the Constitution

8. According to the explanatory memorandum, the draft amendments to the Constitution respond to the need to protect the cultural heritage enshrined in the Preamble to the Constitution ("Bearing in mind the political and cultural heritage of our predecessors and the experience gained through centuries of struggle for our national existence and statehood...") through strengthening the protection of traditional values. In this context, the draft amendments to the Constitution emphasise the sovereignty of the Slovak Republic in fundamental cultural and ethical matters concerning the protection of life and human dignity, private and family life, marriage, parenthood, education and social rights.

9. Therefore, the draft amendments to the Constitution introduce several amendments to Section I on General Provisions (Article 7), Section 2.V on Economic, Social and Cultural Rights (Articles 15, 36 and 41) and Section 8 on Joint Provisions to Title I and Title II (Article 52a). The draft provisions read as follows:

- Draft paragraphs 6 and 7 to be added to Article 7: "(6) The Slovak Republic retains its sovereignty, in particular in matters of national identity, consisting in particular of fundamental cultural and ethical issues relating to the protection of life and human dignity, private and family life, marriage, parenthood and family, public morality, personal status, culture and language, as well as decision-making on related matters in the fields of health, science, education, personal status and inheritance. (7) Nothing in this Constitution and the Constitutional Laws shall be interpreted as an approval of the Slovak Republic for the transfer of the exercise of part of its rights in matters constituting national identity."
- Draft paragraph 5 to be added to Article 15 reads as follows: "(5) An agreement to give birth to a child for another shall be prohibited."
- Draft paragraphs 3 to be added to Article 36: "(3) Equality between men and women in remuneration for work done shall be guaranteed."
- Draft paragraphs 2, 5, 8 and 9 to be added to Article 41:
 - o "(2) The parents of a child shall be the mother and the father; the mother of the child shall be a woman and the father of the child shall be a man."
 - o "(5) A minor child may be adopted by the spouses or by a spouse who is married to either of the parents of the child or by the surviving spouse of the parent or adoptive parent of the minor child. Exceptionally, a single person may also adopt a minor child if the adoption is in the best interests of the child. The adoption shall be decided by the Court."
 - o "(8) Education and schooling of children in the area of intimate life formation and sexual behaviour may be provided only with the consent of the legal representative. Education aimed at the protection of health, physical integrity and the prevention of abuse shall form part of the general education of children in a form appropriate to their age."
 - o "(9) The details of the rights under paragraphs (1) to (8) shall be laid down by law."
- New draft Article 52a: "The Slovak Republic recognises only the biologically determined sexes of male and female."

10. The explanatory memorandum emphasises that the draft amendments to the Constitution are "in accordance with the Constitution of the Slovak Republic, constitutional laws, findings of the Constitutional Court of the Slovak Republic, international treaties and other international documents to which the Slovak Republic is bound, and at the same time it is in accordance with the law of the European Union". It further notes that the draft amendments to the Constitution will have no impact, among others, on marriage, parenthood and family.

III. Analysis

A. Law-making process

11. Based on the explanatory memorandum, the discussion held, and the observations received from the authorities and other interlocutors, the process of developing the draft amendments to the Constitution can be summarised as follows.

12. According to the authorities, the draft amendments to the Constitution were initiated by the Government in January 2025 and went through the standard legislative process. They were submitted to public and inter-ministerial consultations (15 working days from 28 January to 17 February 2025) and discussed with several leading legal experts at a meeting convened under the auspices of the Prime Minister. Based on the information provided by the authorities, a total of 117 comments were received – the majority from various state bodies in the framework of the inter-ministerial consultations. According to the information provided by the authorities, only one NGO submitted comments. Eight comments were submitted by the public; only two were partially accepted. The draft amendments to the Constitution were approved by the Government and transmitted to the National Council (Parliament) on 7 March 2025.

13. Members of the National Council proposed additional amendments. According to the authorities, the draft amendments to the Constitution are also supported by part of the opposition; this shows a broader political consensus across the political spectrum. The National Council examined the draft amendments to the Constitution in the first reading on 9 April 2025. According to the National Council's website, the vote in second reading took place on 17 June 2025.¹ During the online meetings with the parliamentary majority coalition and opposition held on 11 September 2025, the delegation was informed that the Parliament will consider the draft amendments to the Constitution on 25 September 2025 and that no substantial changes to the text would be possible.

14. According to the information provided by the authorities on 23 September 2025, the extensive consultations and expert discussions continue, and a survey conducted in September 2025 shows the support of the population committed to traditional values towards the draft amendments to the Constitution.

15. According to Article 85 of the Procedural Rules of the National Council of the Slovak Republic, "(1) The third reading shall be limited solely to those parts of the bill to which amendments were proposed during second reading. (2) In the third reading, Members may propose only corrections of linguistic and legislative-technical mistakes".

16. The Venice Commission recalls the importance of the procedural element for the quality of the legislative process and, in particular, refers to principle II/A/5 of the Rule of Law Checklist ("law-making procedures"),² according to which the process for enacting law should be transparent, accountable, inclusive, and democratic. Notably, the public – and in particular the groups primarily affected – should have a meaningful opportunity to provide input and, where appropriate, impact assessments should be made before adopting legislation. The Venice Commission emphasises from the outset that "When drafting provisions on constitutional amendment, there is a need for awareness of the potential effects of such rules; this requires both general and comparative analysis as well as a good knowledge of the national constitutional and political context".³ Furthermore, the process of amending the Constitution should be conducted with the highest levels of transparency and inclusiveness – particularly when draft amendments, such as the current ones, may significantly affect key aspects of the Constitution, such as international obligations and the protection of fundamental rights.

17. In its Checklist related to the Relationship between the Parliamentary Majority and the Opposition in a Democracy, the Venice Commission stressed that "complex and controversial bills would normally require particularly long advance notice, and should be preceded by pre-drafts, on which some kind of (internet-) consultation takes place. The public should have a meaningful opportunity to provide input [...]. Allocation of additional time for public consultations

¹ [Výsledky vyhľadávania v hlasovaniach NR SR](#).

² Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, principle II/A/5/iv and v, as well as related footnotes 32-33.

³ Venice Commission, [CDL-AD\(2010\)001](#), Report on Constitutional Amendment, para. 243.

increases the ability of the opposition to influence the content of the legislative proposals by the Government or the majority. The majority should not manipulate the procedure in order to avoid such public consultations".⁴ The Commission has consistently held that transparency, openness and inclusiveness, as well as adequate timeframes and conditions allowing for a variety of views and proper, wide and substantive debates of controversial issues, are key requirements of a democratic constitution-making process and help ensure that the text is adopted by society as a whole, and reflects the will of the people. Notably, these should involve political institutions, non-governmental organisations and citizens' associations, academia, the media and the wider public; this includes proactively reaching out to persons or groups that would otherwise be marginalised. The Commission also emphasised that properly conducted amendment procedures "may contribute significantly to the legitimacy and sense of ownership of the Constitution and to the development and consolidation of democratic constitutional traditions over time. In contrast, if the rules and procedures on constitutional change are open to interpretation and controversy, or if they are applied too hastily or without democratic discourse, then this may undermine political stability and, ultimately, the legitimacy of the Constitution itself".⁵

18. During the visit, the delegation was informed about the insufficient involvement of civil society, vulnerable groups, and the wider public in the legislative process. Several interlocutors also described the process as lacking coherence and transparency, pointing out that the version of the draft amendments to the Constitution submitted to the National Council differed significantly from the draft circulated initially for inter-ministerial consultation, and that the objections raised by the public during the consultation process were not considered; instead, the contested provisions were replaced with provisions regarded as even more problematic. In this context, a number of interlocutors expressed grave concerns that the draft amendments to the Constitution pose substantial risks of legal uncertainty, conflict with EU law, weakening human rights protection in Slovakia and respect for Slovakia's international obligations.

19. As it appears from the discussions and materials available, the draft amendments to the Constitution have been prepared and adopted in the first two readings with insufficient opportunities for an adequate consultation process and public debate. Furthermore, no thorough analysis of the impact of the new constitutional provisions had been conducted.

20. The Venice Commission notes in this regard that in its 2024 Rule of Law Report on Slovakia, the European Commission noted no progress in ensuring effective public consultation in the law-making process, as major reforms proceed without effective stakeholder involvement. The European Commission further noted that the 2023 Rule of Law Report had also noted the lack of systematic involvement of stakeholders in the legislative process, as well as the frequent use of the fast-track legislative procedure.⁶

21. The Venice Commission wishes to emphasise that the "Constitution of a country should provide a sense of constitutionalism in society, a sense that it truly is a fundamental document and not simply an incidental political declaration. Hence, both the manner in which it is adopted and the way in which it is implemented must create in the society the conviction that, by its very nature, the Constitution is a stable act, not subject to easy change at the whim of the majority of the day. A constitution's permanence may not be based solely on arithmetical considerations stemming from the relationship between the numerical strength of the ruling and opposition parties in Parliament. Constitutional and ordinary politics need to be clearly separated because the Constitution is not part of the 'political game', but sets the rules for this game. Therefore, a

⁴ Venice Commission, [CDL-AD\(2019\)015](#), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, para. 74.

⁵ Venice Commission, [CDL-AD\(2021\)007](#), Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic, para. 32. See also [CDL-AD\(2010\)001](#), Report on Constitutional Amendment, paras 204-205.

⁶ See [2024 Rule of Law Report - Country Chapter Slovakia](#), page 31.

constitution should set neutral and generally accepted rules for the political process. For its adoption and amendment, a wide consensus needs to be sought".⁷

22. In light of the above considerations, the Venice Commission finds that the consultations which were carried out and are still scheduled by the authorities cannot be considered as "meaningful" given that they took place after the second reading, while the scheduled third reading allows only corrections of linguistic and legislative-technical mistakes, not also substantive ones. The Venice Commission encourages the authorities to ensure, in future legislative processes, that sufficient time is allocated to inclusive consultations – as described above – before the draft legislation is submitted to the Parliament for consideration.

B. International standards

23. The Slovak Republic is a State party to all the major international human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which entered into force in the Slovak Republic on 1 January 1993.⁸ Since then, the ECHR has become an integral part of the Slovak legal system and is recognised as taking precedence over legislation. Under Article 46(1) of the ECHR concerning the binding force and execution of judgments, Slovakia undertook to abide by the final judgment of the European Court of Human Rights (ECtHR) in any case to which it is a party.

24. The Slovak Republic joined the European Union in 2004. Pursuant to Article 49 of the Treaty of the European Union (TEU), "Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union". By joining the EU, the Slovak Republic agreed to be bound by the EU treaties, legislation and *acquis*, including the general principles upon which the EU is founded and developed in the case law of the CJEU (which ensures that the Member States comply with obligations under the Treaties, and interprets European Union law at the request of the national courts and tribunals), including the principles of conferral, subsidiarity, and primacy of EU law, as well as the Charter of Fundamental Rights. In particular, Articles 4 and 5 of the TEU provide that the Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. The limits of EU competences are governed by the principle of conferral – the EU shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the EU in the Treaties remain with the Member States. The application of EU competences is governed by the principle of subsidiarity – in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level) and the principle of proportionality (the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties).⁹

25. Slovakia is also a State Party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

⁷ [CDL-AD\(2013\)012](#), Hungary - Opinion on the Fourth Amendment to the Fundamental Law, para. 137.

⁸ See Council of Europe Treaty Office, [Chart of signatures and ratifications of the ECHR](#).

⁹ See [Consolidated version of the Treaty on European Union](#).

C. National sovereignty and constitutional supremacy

26. Article 1 of the Constitution provides that the Slovak Republic is a sovereign, democratic state governed by the rule of law (1), acknowledging and adhering to general rules of international law, international treaties by which it is bound, and its other international obligations (2). Article 7(5) further specifies the modalities of interaction of the national legal order with the international law: "International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws".

27. Draft paragraph 6 of Article 7 of the Constitution introduces several new concepts: "The Slovak Republic retains its sovereignty, in particular in matters of national identity, consisting in particular of fundamental cultural and ethical issues relating to the protection of life and human dignity, private and family life, marriage, parenthood and family, public morality, personal status, culture and language, as well as decision-making on related matters in the fields of health, science, education, personal status and inheritance". Draft paragraph 7 stipulates that "Nothing in this Constitution and the Constitutional Laws shall be interpreted as an approval of the Slovak Republic for the transfer of the exercise of part of its rights in matters constituting national identity".

28. The explanatory memorandum clearly indicates that these provisions aim to address the relationship of the national legal order to the EU and Slovakia's international obligations, as well as "the potential or existing activism of international courts and institutions encroaching on the exclusive powers of nation-states, or rights the exercise of which has not been delegated to international institutions. Such decisions could not be interpreted as binding on the Slovak Republic under the proposed provision if they would interfere with fundamental cultural and ethical issues such as the definition of marriage, the protection of life or human dignity". The explanatory memorandum also notes that the principle of primacy of the EU should not apply in areas where the Member States have not transferred competence to the EU, including issues of a cultural and ethical nature. In their written input, the authorities also specified that they do not see risks for the legal certainty, protection of human rights and international obligations of the Slovak Republic, as the draft amendments to Article 7 concern the rights, the exercise of which has not been transferred by the Slovak Republic to the EU, which fall within the exclusive competence of the Member States. Consequently, according to the authorities, "their exercise remains entirely at the disposal of the sovereign and independent Slovak Republic".

29. The Venice Commission notes that in general, other European States have emphasised national sovereignty as part of the core national values and of the national/constitutional identity. The Commission previously noted that the so-called "eternity clauses" ("material core of the constitution", "constitutional core", etc.) or "unamendable" clauses most frequently relate to the form of government, sovereignty, territorial indivisibility, and certain fundamental rights and freedoms. The Commission further indicated that the existence of such provisions can often be explained by legitimate historical reasons, specifying that "All historical evidence indicate that ... if circumstances change enough, or if the political pressure gets too strong, then even "unamendable" rules will be changed – one way or the other. ... the Venice Commission would as a general principle advocate a restrictive and careful approach to the interpretation and application of "unamendable" provisions".¹⁰

30. The term "Basic Law's constitutional identity – its inviolable core" was first mentioned by the Federal Constitutional Court of Germany in its Judgment of 30 June 2009, specifying that "While the Basic Law authorises the legislator to transfer far-reaching sovereign powers to the European Union, it is subject to the condition that European integration on the basis of the principle of

¹⁰ [CDL-AD\(2010\)001](#), *op. cit.*, paras 215, 217 and 219-220.

conferral safeguards sovereign statehood and respects the constitutional identity of the Member States, and that Member States do not lose their ability to autonomously shape political and social conditions". Among others, the French Constitutional Council, in its of 27 July 2006 noted that "the transposition of a Directive cannot run counter to a rule or principle inherent to the constitutional identity of France", unless the constituent power gives its consent thereto; the Supreme Court of Estonia, in its judgment 12 July 2012, noted that "The core essence of sovereignty is the right of discretion in all matters, irrespective of external influences. One element of the state's sovereignty is its financial sovereignty, which contains taking decisions on budgetary matters and on the assumption of financial obligations for the state". The Constitutional Court of the Czech Republic, in its judgment of 31 January 2021, emphasised the importance of the "protection of the material core of the constitution".¹¹ The Venice Commission notes that such developments occurred in the constitutional jurisprudence of a number of EU Member States.

31. As regards the constitutional entrenchment of "constitutional identity", Hungary introduced such a reference as a constitutional value, and more recently established a Sovereignty Protection Office tasked *inter alia* with protecting constitutional identity. Another example in this regard is the Russian Federation, a former member State of the Venice Commission and the Council of Europe, which, by way of amendments to the Federal Constitutional Law on the Constitutional Court, empowered the Court to declare the ECtHR judgments non-executable, a development the Commission found incompatible with Article 46 of the ECHR and the principle of *pacta sunt servanda*. Later constitutional amendments entrenched this approach, allowing national authorities to disregard international decisions considered contrary to the Constitution. In its opinions concerning the above-mentioned amendments, the Venice Commission has underlined that such provisions, formulated in broad and indeterminate terms, risk undermining legal certainty, the effective protection of fundamental rights, and the primacy of international and supranational law.¹²

32. The Venice Commission recalls that Article 4 (2) of the TEU recognises the member states' national identities, "inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security". Article 5 of the TEU limits the competences of the EU by the principle of conferral. In areas where the EU does not have exclusive competence, the principles of subsidiarity in Article 5 (3) of the TEU and proportionality in Article 5 (4) of the TEU aim to ensure that EU action does not go further than necessary to achieve the aims of the treaties. Referring to para. 23 above, the Venice Commission also recalls that it is for the Court of Justice to interpret EU law.

33. Regarding the ECHR, the principle of subsidiarity and the doctrine of margin of appreciation serve to balance the discretion of national authorities with European supervision. In its case-law, the ECtHR has extended a wider margin of appreciation to the member States in several of the areas listed in the draft amendments to the Constitution as examples of national identity, such as private and family life, public morality, and health. The ECtHR notably emphasised that it is primarily the responsibility of national authorities to make the initial assessment, subject to ECtHR's review, of where the fair balance lies in assessing the need for interference in the public

¹¹ See Federal Constitutional Court of Germany, Judgment [2 BvE 2/08](#) of 30 June 2009 on the Lisbon Treaty, para. 223 and further references. French Constitutional Council, [Decision no. 2006-540 DC](#) of 27 July 2006 on Copyright and related rights in the information Society, para. 19; Supreme Court of Estonia, [Constitutional judgment 3-4-1-6-12](#) of 12 July 2012 on a request of the Chancellor of Justice to declare Article 4(4) of the Treaty establishing the European Stability Mechanism signed on 2 February 2012 in Brussels to be in conflict with the Constitution, para. 127; Constitutional Court of the Czech Republic, [Pl. ÚS 5/12](#), 31 January 2021.

¹² Venice Commission, [CDL-AD\(2016\)005](#), Interim Opinion on the amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation, [CDL-AD\(2020\)009](#), Opinion on draft amendments to the Constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the European Court of Human Rights, [CDL-AD\(2021\)029](#), Hungary - Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020, [CDL-AD\(2024\)001](#), Hungary - Opinion on Act LXXXVIII of 2023 on the Protection of National Sovereignty.

interest with individuals' rights. The ECtHR also stressed that the margin of appreciation "will be relatively narrow where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will also be restricted. Where there is no consensus within the Contracting Parties to the Convention, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider ... matters of health-care policy are in principle within the margin of appreciation of the domestic authorities, who are best placed to assess priorities, use of resources and social needs."¹³

34. Against this backdrop, from the national perspective, a consequence of sovereignty is that the Slovak Republic is free to choose its constitutional model and legal system, and to decide the relation between the national legal system and international law,¹⁴ as provided in Article 7 of the Slovak Constitution. The Venice Commission recalls that as long as the Slovak Republic remains a party to a treaty or treaty system, the international legal obligations that flow from that treaty cannot be defined or subsequently delimited by domestic law. Article 26 ("Pacta sunt servanda") of the Vienna Convention on the Law of Treaties makes it clear that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith". Article 27 ("Internal law and observance of treaties") further stipulates that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. ...". No legal argument at national law, including constitutional law, can justify an act or omission which turns out to be in breach of international law. In its Rule of Law Checklist, the Venice Commission emphasised that "The principle of the Rule of Law does not impose a choice between monism and dualism, but pacta sunt servanda applies regardless of the national approach to the relationship between international and internal law".¹⁵

35. Consequently, the scope of the international legal obligations that the Slovak Republic undertook has already been defined by the respective treaties, principles, and subsequent practice within international legal orders to which the Slovak Republic is a member. As far as Slovakia's international obligations are concerned, a constitutional provision that declares that the State retains its sovereignty in matters of national identity (as already provided in Article 4(2) of the TEU) may not limit the effect of the applicable international and supranational law in the Slovak legal system. It is fundamental for both the EU legal order and the ECHR legal order that national authorities and courts comply with their international obligations loyally and that they respect the binding decisions of the CJEU and ECtHR, respectively.

36. Therefore, the Venice Commission considers that, for the above-mentioned risks to be averted, it is essential to provide a definition of the concept of "national identity" that is not inconsistent with the Slovak Republic's international obligations. It would not be possible to selectively opt out of existing treaty obligations by reference to the constitutional guarantee for national identity, i.e., to have a 'right to pick and choose' which court decisions are considered binding, and which are not. The Venice Commission emphasises that the obligation to execute the international judgments remains.

37. In light of the above considerations, the Venice Commission has three points of particular concern:

38. First, the list of values falling under "national identity" provided in draft para. 6 of Article 7 is merely indicative and potentially open-ended, as signalled by the use of the qualifier "in particular" twice. The Commission wishes to emphasise that the use of vague and indeterminate

¹³ ECtHR, [Vavříčka and Others v. the Czech Republic](#) [GC], nos. 47621/13 and 5 others, 8 April 2021, paras 273-274.

¹⁴ [CDL-AD\(2016\)005](#), *op. cit.*, para. 38.

¹⁵ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist II.A.3, para. 48.

formulations, such as references to "national identity" or "cultural and ethical issues," which are not defined in the Slovak legislation, creates a significant risk of unpredictable and expansive interpretation in practice. Such a degree of vagueness could enable different state authorities to interpret and apply these notions arbitrarily or inconsistently, leading to legal uncertainty, undermining constitutional principles, weakening the protection of human rights, and providing a pretext for selectively disregarding Slovakia's international obligations. This concern was raised by a number of interlocutors during the delegation's visit.

39. Second, draft para. 7 of Article 7 appears to grant the Slovak Republic authority over all matters of "national identity" with retroactive effect on previous transfers of powers or treaty obligations. This provision could be read as a declaratory statement of constitutional law, similar to declarations found in some constitutions that the State is independent. However, if the provision is applied with respect to the non-fulfilment of an obligation under international law, this would, regardless of the constitutional basis, constitute a violation of the principle of *pacta sunt servanda* (see para. 34 above) and the Slovak Republic's obligations to the other parties to the treaty.

40. The third point concerns the coherence between the proposed amendments to Article 7 and Articles 1(2) and 7(2) of the Constitution. Article 1(2) states that the Slovak Republic "acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations". Article 7 (2) allows for the transfer of powers to the EU and states in its second sentence: "Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic". While it is not the task of the Venice Commission to interpret national constitutional law, it considers that there may be a tension between these provisions and Article 7 (7) as the latter could be read as undermining the former.

41. The Venice Commission notes that it is not its role to interpret the Constitution of the Slovak Republic. It is for the Constitutional Court of the Slovak Republic to interpret these provisions and to resolve potential internal incoherencies. The delegation of the Venice Commission was informed of the Slovak Constitutional Court's jurisprudence referring to what is understood as the "substantive core of the Constitution" according to which certain constitutional principles – such as the rule of law, separation of powers, and protection of fundamental rights – are fundamental to the character of the Slovak Republic as a democratic and legal state, and cannot be compromised even through constitutional amendments.¹⁶

42. The Venice Commission nonetheless has assessed the draft amendments to the Constitution in light of international standards and, in this context, considers this third point problematic from a rule of law perspective, as it undermines legal certainty in the protection of human rights, potentially serving as a pretext to disregard Slovakia's international obligations.¹⁷

43. Therefore, the Venice Commission recommends removing the qualifiers "in particular" and specifying the concepts of "national identity" and "cultural and ethical issues" in draft para. 6 and repealing draft para. 7 to prevent the risk of arbitrary interpretation and application undermining legal certainty, protection of human rights and conflicts with the Slovak Republic's international obligations.

¹⁶ [Brief history - Ústavný súd Slovenskej republiky](#)

¹⁷ [CDL-AD\(2016\)007](#), *op.cit.*, II.B.3 and 4 and II.A.3.

D. Family Law, Parental Rights, and Education

1. Surrogacy

44. Article 15 of the Slovak Constitution enshrines the right to life. Article 15 is to be amended by adding a new paragraph 5 that prohibits "giving birth to a child for another" (surrogacy) in all circumstances. New draft paragraph 5 reads as follows: "(5) An agreement to give birth to a child for another shall be prohibited". The explanatory memorandum does not contain any reference to this draft amendment. During the discussions in Bratislava, the authorities underlined that surrogacy is a very sensitive issue in Slovak society and that the draft constitutional provision aims at preventing abuse and protecting women, particularly those in poverty, from exploitation. During the online meetings, the members of the Slovak Parliament stressed that further implementing legislation will be necessary.

45. The Venice Commission refers to the comparative-law study conducted by the ECtHR concerning 35 Council of Europe member States, which shows that surrogacy is expressly prohibited in 14 member States. In 10 of these States, it is either prohibited under general provisions or not tolerated, or the question of its lawfulness is uncertain. Surrogacy is expressly authorised in seven member States and appears to be tolerated in four others. The ECtHR also noted that "this lack of consensus reflects the fact that recourse to a surrogacy arrangement raises sensitive ethical questions. It also confirms that the States must, in principle, be afforded a wide margin of appreciation, regarding the decision whether or not to authorise this method of assisted reproduction".¹⁸ The ECtHR concluded that there is no consensus amongst member States on the lawfulness of surrogacy.

46. Slovakia would appear to be the only country with an absolute prohibition based on the Constitution, which would exclude surrogate motherhood in all circumstances, including cases involving voluntary agreements without payment. Nonetheless, this constitutional provision does not appear to be in breach of European human rights standards.

2. Adoption

47. According to draft paragraphs 2 and 5 of Article 41: "(2) The parents of a child shall be the mother and the father; the mother of the child shall be a woman and the father of the child shall be a man. (5) A minor child may be adopted by the spouses or by a spouse who is married to either of the parents of the child or by the surviving spouse of the parent or adoptive parent of the minor child. Exceptionally, a single person may also adopt a minor child if the adoption is in the best interests of the child. The adoption shall be decided by the Court".

48. The explanatory memorandum states that these provisions are not new to the Slovak legal order. They already appear in Article 5 of the Act on the Family and are now to be incorporated into the Constitution. The stated objective is "to underscore the legitimacy of marriage as the irreplaceable union of one man and one woman in fulfilling the important social role of raising children". In their submission, the authorities reiterated that the legal system of the Slovak Republic already provides sufficient normative and application guarantees for taking into account the best interests of the child.

49. The Venice Commission notes that issues related to adoption are covered by the right to private and family life (Article 8 of the ECHR and Article 17 of the ICCPR). It also emphasises that the guiding principle in adoption must be the best interests of the child, as enshrined in Article 3(1) of the CRC. Article 21(1) of the CRC explicitly stipulates that "States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration". The UN Committee on the Rights of the Child has drawn attention to

¹⁸ ECtHR, *Mennesson v. France*, no. [65192/11](#), Judgment of 26 June 2014, paras 78-79.

the use of the word "paramount", which suggests that "in respect of adoption (Article 21), the right of best interests is further strengthened" (*sic*).¹⁹ The Venice Commission recalls that Article 8 ECHR does not entail a right to adoption. If a state, however, grants such a right, Article 14 ECHR (prohibition of discrimination) applies.²⁰

50. The ECtHR has repeatedly addressed adoption and has recognised that there is little common ground between Council of Europe States, where the law remains in a transitional phase. Consequently, States enjoy a wide margin of appreciation in this area.²¹ This margin, however, is not unlimited. States must be guided by the principle of the best interests of the child,²² and any restrictions must be justified under the three-part limitation test (legality, legitimacy, and necessity). The principle of non-discrimination must also be respected. In *X and Others v. Austria*, the Grand Chamber of the ECtHR accepted that married and unmarried couples are not in a relevantly similar position, noting that marriage confers a special status protected by Article 12 of the ECHR and entails significant social, personal, and legal consequences.²³ There is currently no obligation to extend marriage to same-sex couples. Therefore, if a State, such as Slovakia, reserves marriage to a man and a woman and if it, at the same time, limits joint adoption to married couples, the exclusion of unmarried couples, regardless of the sexual orientation of their members, does not in itself amount to a violation of the ECHR. As far as unmarried couples are concerned, the ECtHR has already established that the Convention does not oblige States to extend the right to second-parent adoption to unmarried couples.²⁴ Conversely, if a single person is entitled to adopt or foster children, the general principle, already highlighted above, applies. Hence, if a difference in treatment is based solely on considerations regarding the applicant's sexual orientation, this would amount to discrimination under the Convention.²⁵

51. The Venice Commission notes that Slovak regulation allows adoption by individuals, albeit exceptionally. This provision needs to apply without distinction based on sexual orientation. As Slovakia's own regulation indicates, the sole guiding principle in deciding on adoption must be the best interests of the child. This concept cannot be interpreted to justify the blanket exclusion of any category of persons based on their sexual orientation. Moreover, an individual's sexual orientation cannot be the factor determining the outcome of an adoption procedure. The ECtHR has repeatedly held that "differences based on sexual orientation require particularly serious reasons by way of justification."²⁶

52. The Venice Commission notes that by elevating the provisions from ordinary law into the Constitution, any future attempt to broaden adoption rights (for example, to allow same-sex couples to adopt) would require a constitutional amendment, thereby entrenching the exclusion of same-sex couples and making legal reform significantly more difficult. The amendment to Article 7, as analysed above, would, at the same time, make it difficult to challenge the legislation before national or international courts.

53. Referring to draft para 9 of Article 41 of the Constitution, which provides that the details of the rights under paragraphs (1) to (8) shall be laid down by law, the Venice Commission considers that any decision in these procedures must be based on an individualised assessment of the specific circumstances of the case and the best interests of the child concerned, rather than on

¹⁹ UN Doc. [CRC/C/GC/14](#), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1), 29 May 2013, para. 38.

²⁰ ECtHR, *E.B. v. France* [GC], no. [43546/02](#), Judgment of 22 January 2008, para. 41.

²¹ ECtHR, *Kurochkin v. Ukraine*, no. [42276/08](#), Judgment of 20 May 2010, para. 52.

²² ECtHR, *Zaiet v. Romania*, no. [44958/05](#), Judgment of 24 March 2013, para. 39.

²³ ECtHR, *X and Others v. Austria*, no. [19010/07](#), Judgment of 19 February 2013, para. 106.

²⁴ *Ibid.*, para. 136.

²⁵ ECtHR, *E.B. v. France* [GC], *op.cit.*, para. 93.

²⁶ ECtHR, *X and Others v. Austria*, *op. cit.*, para. 99.

general assumptions or prejudice about the suitability of individuals of a particular sexual orientation to act as parents.

3. Education

54. Draft para. 8 of Article 41 of the Constitution stipulates that "Education and schooling of children in the area of intimate life formation and sexual behaviour may be provided only with the consent of the legal representative. Education aimed at the protection of health, physical integrity and the prevention of abuse shall form part of the general education of children in a form appropriate to their age". The explanatory memorandum justifies this provision by asserting that control over education should not be solely at the discretion of the State but also involve parents, who must be able to decide whether their child participates in activities beyond the national curriculum, especially when these activities conflict with their religious, philosophical, moral, or ethical principles. It additionally highlights that in sensitive areas such as intimate life and sexual behaviour, parents should have the final say.

55. The Venice Commission has doubts about the compatibility between the two successive sentences requiring consent of a legal representative for sexual education on the one hand and providing, on the other hand, for the obligation to ensure education aimed at the protection of health, physical integrity and the prevention of abuse, as the second sentence could also cover sexual education. This could cause confusion due to unclarity of the applicable rule as well as difficulties in the implementation.

56. The Venice Commission notes that the role of parents is explicitly recognised under Article 2 of Protocol No. 1 to the ECHR, which guarantees "the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions". However, this right is not absolute and must be balanced against the rights of the child and the State's duty to provide education. The Commission has already stated that it is tempting for states to use public education for ideological goals, and to favour the most influential 'philosophy of life'. However, in the light of Article 2 Protocol No. 1 to the ECHR, in itself and in conjunction with Article 14 ECHR, states are obliged to abstain from such instrumentalisation of the public education system, and instead must ensure an objective and pluralist curriculum and avoid indoctrination in a dominant philosophy. The Venice Commission also stressed that, "where sex education is provided, this must be non-discriminatory towards individuals and the promotion of constitutional values must not lead to disregarding and disrespecting the diversity of religious opinions and sexual identities ... in order to do that, the public-school system must provide an objective and pluralist curriculum, avoiding any indoctrination and discrimination between individuals on all grounds including sexual orientation".²⁷

57. As regards sex education in State schools in particular, the ECtHR noted that "the second sentence of Article 2 (P1-2) implies (...) that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions".²⁸ The ECtHR also stressed that one of the aims of sex education was to prepare children for social realities and prevent sexual violence and exploitation, which posed a real threat to the physical and mental health of children and against which they had to be protected at all ages.²⁹ The Venice Commission observes that international human rights standards, especially in light of Article 2 of the Convention on the Rights of the Child (CRC) and

²⁷ Venice Commission, [CDL-AD\(2021\)050](#), Hungary - Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children, para. 78.

²⁸ ECtHR, *Dojan and Others v. Germany*, no. [319/08](#), Decision on the admissibility, 13 September 2011.

²⁹ In the case of *A.R. and L.R. v. Switzerland*, no. [22338/15](#), Decision of 19 December 2017, para. 35.

related practice, support the right to receive age-appropriate information concerning sexuality, in a non-discriminatory manner.

58. Therefore, the Venice Commission considers that the provisions strengthening legal representatives' rights over educational content should be balanced carefully with the State's duty to provide accessible, objective, and non-discriminatory education, and with children's rights to receive information essential for their well-being and development.

E. Gender, Sex and Equality

1. Gender identity

59. The new draft Article 52a of the Constitution stipulates that: "the Slovak Republic recognises only the biologically determined sexes of male and female". According to the explanatory memorandum, this would correspond to the biological understanding of sex, reflected throughout the Slovak legal order, notably in constitutional provisions defining marriage as a unique union between a man and a woman and granting women special protections related to health and working conditions, especially during pregnancy. At the same time, during the discussions with the delegation, the authorities stated that in case of transition, the persons concerned would be treated as their new gender.

60. The above-mentioned points call for the following observations.

61. In its current wording, the draft constitutional provision would imply that transgender, intersex and non-binary persons cannot obtain legal recognition of the gender transition they have undergone, with or without undergoing trans specific healthcare, by having the sex of their choice mentioned in official documents.³⁰

62. Referring to its previous opinions of Hungary and Georgia, the Venice Commission notes that under international human rights law, individuals have a "right to a self-identity" based not only on their "sex at birth" but also on their "gender". In this regard, international human rights covenants have consistently been interpreted as recognising that self-identity is also shaped by gender, the socially constructed characteristics and roles for women and men.³¹

63. The Commission notes that there is no uniformity of approach in its member states as regards the recognition of gender identity. In Hungary, a strict binary definition of sex has been constitutionally entrenched through successive reforms. In the United Kingdom, court rulings affirmed a binary definition of sex, but this remains a matter of judicial interpretations rather than constitutional provisions.³² A number of countries have moved toward legally recognising non-binary or third gender categories, albeit again through legislation or judicial decisions rather than constitutional amendments. For example, in 2017, the German Federal Constitutional Court ruled that the provisions of the Civil Status Act were incompatible with the Basic Law's requirements to the extent that they did not provide for a third option, besides the categories "female" or "male".³³ In 2018, the Constitutional Court of Austria ruled that recognition beyond the male/female binary

³⁰ Venice Commission, [CDL-AD\(2024\)021](#), Georgia - Opinion on the draft constitutional law on Protecting Family Values and Minors, para. 45. See also ECRI's [conclusions](#) on the Slovak Republic (published on 10 March 2023), page 5.

³¹ Venice Commission, [CDL-AD\(2021\)029](#), Hungary - Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020, para. 36 and [CDL-AD\(2024\)021](#), *op. cit.*, para 45.

³² The Supreme Court of the United Kingdom, Judgment [UKSC/2024/0042](#), *For Women Scotland Ltd v. The Scottish Ministers*.

³³ Federal Constitutional Court of Germany, Order of 10 October 2017 - [1 BvR 2019/16](#).

is guaranteed under the ECHR.³⁴ One year later, its counterpart in Belgium struck down laws restricting legal gender to male or female as discriminatory.³⁵

64. Under the ECHR, gender identity is recognised as a component of personal identity, falling under the right to respect for private life.³⁶ The ECtHR has developed a consistent line of jurisprudence, which allows applicants subjected to discrimination based on their sexual orientation and/or gender identity to claim a violation of Article 14 ECHR in conjunction with another substantive right of the ECHR.³⁷ While the ECtHR has interpreted the rights under Article 8 in light of the developments in the legal framework of the member States to include a positive obligation to provide a legal recognition to the new gender of a postoperative transgender person, the Court has not extended this obligation to a recognition of a third or neutral sex of a biologically intersex person since birth. In its 2023 judgment *Y v. France*,³⁸ the ECtHR concluded that the legal recognition of gender identity of biologically intersex persons since birth is a general political question on which there will be diverging views in a democratic society and for which there is no consensus among the Council of Europe member States. Consequently, the Court found that each member State must decide on the status of a third or neutral sex in its own pace.

65. The authorities pointed out that under the Slovak law, without a biologically changed gender, a person remains the gender assigned to them at birth. The authorities also recalled that Article 12 para. 2 of the Constitution prohibits discrimination on the basis of gender, sex, or sexual orientation. Nonetheless, given the above-mentioned considerations, the Venice Commission notes that while the choice of recognition of a third or neutral sex falls within the margin of appreciation of Slovakia, entrenching a strict binary understanding of sex in the Constitution cannot justify discrimination based on sexual orientation or gender identity in subsequent legislation or state measures. The Venice Commission recommends deleting the words "biologically determined" from draft Article 52a and developing a sufficiently detailed and precise law, providing expeditious, transparent and accessible procedures for changing the registered sex marker of transgender people.

2. Equal pay

66. According to the draft amendment to Article 36, "(3) Equality between men and women in remuneration for work performed shall be guaranteed". The Explanatory memorandum clarifies that, in view of the persistent problem of unequal remuneration between men and women, it is considered important to enshrine the guarantee at the constitutional level.

67. The Venice Commission notes that in the national report submitted to the European Committee of Social Rights in December 2024, the Government of Slovakia noted concerning the implementation of Article 4 (the right to a fair remuneration), paragraph 3 (to recognise the right of men and women workers to equal pay for work of equal value) of the Social Charter that: "Equal work and work of equal value is defined in Article 119a of the Labour Code. The principle of equal pay for men and women is enshrined in Article 157 of the Treaty on the Functioning of the European Union. Therefore, the principle of equal pay for men and women is part of the Labour Code. Article 119a(2) of the Labour Code provides that "women and men have the right to equal pay for equal work or work of equal value. ... Equal pay without distinction of sex,

³⁴ Constitutional Court of Austria, Judgment [G 77/2018](#), 15 June 2018.

³⁵ Constitutional Court of Belgium, Judgment [99/2019](#), 19 June 2019.

³⁶ At European level, ECtHR, *Van Kück v. Germany*, no. [35968/97](#), Judgment of 12 June 2003; *A.P., Garçon and Nicot v. France*, nos. [79885/12](#), [52471/13](#) and [52596/13](#), Judgment of 6 April 2017, paras 95-96. European Court of Justice (ECJ), *P v S and Cornwall County Council*, 30 April 1996.

³⁷ ECtHR, *X and Others v. Austria* [GC], *op. cit.*; *Taddeucci and McCall v. Italy*, no. [51362/09](#), Judgment of 30 June 2016; *Sousa Goucha v. Portugal*, no. [70434/12](#) Judgment of 22 March 2016.

³⁸ ECtHR, *Y v. France*, no. [76888/17](#), Judgment of 31 January 2023, paras 90-91.

therefore, means that pay for equal work at piece rate is calculated at the same rate and also that pay for work at time rate for equal work is the same".³⁹

68. The Venice Commission notes that provisions on minimum, just or fair remuneration are not uncommon in constitutions, including in Council of Europe member states. Globally, some constitutions prohibit unequal salaries due to, for example, gender, age, and ethnicity or other grounds not objectively related to the work or equal pay for work of equal value. Among the Council of Europe member States, a provision requiring equal pay between men and women can be found in the constitutions of Italy, Malta, Romania, and Switzerland. The Venice Commission has previously expressed concerns regarding the wide use of constitutional amendments or the use of organic laws requiring a qualified majority to cement the economic, social, fiscal, family, educational, etc. policies and place them beyond the reach of ordinary majoritarian politics.

69. The Venice Commission considers that there are no such concerns regarding a constitutional amendment guaranteeing equal pay between men and women. Equal pay for men and women is a specification of the more general principle of equality in Article 12 of the Constitution and in international human rights law. The amendment will highlight this specific modality of the equality and non-discrimination principle, which may give it greater impact on legislation and in public life.

70. As mentioned above, a comparative overview suggests that this type of provision is also found in other constitutions, though the modalities vary. It could be mentioned that the principle of equality and the prohibition of discrimination contains more relevant categories of prohibited grounds for unequal treatment than only gender. Some of these categories, for example, ethnicity, could also be considered to be included in Article 36.

71. The Commission welcomes this step, which aligns with Slovakia's obligations under international law, including the prohibition of discrimination, as well as broader European standards promoting gender equality and equal treatment in employment.⁴⁰ The Commission considers that enshrining the principle of equal pay at the highest level of the legal order can serve as an important normative and symbolic measure supporting effective implementation in practice.

72. The Commission also notes that the real impact of such a constitutional provision will depend on the adoption of implementing legislation and effective enforcement mechanisms. There is a risk that, if not accompanied by adequate secondary legislation and institutional support, the constitutional guarantee may remain declaratory in nature and not substantially improve pay equality in practice.

IV. Conclusion

73. By letter of 23 June 2025, the Chairperson of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe requested an urgent opinion of the Venice Commission of the Council of Europe on the draft amendments to the Constitution of the Slovak Republic.

74. The draft amendments to the Constitution raised concerns among a part of the opposition, civil society and the international community as to the legislative process and risks that they would entail, if adopted, for the legal certainty, protection of human rights and respect for Slovakia's international obligations. At the time of the finalisation of this Urgent Opinion, the draft amendments to the Constitution were due to be examined by the National Council in its third reading on 25 September 2025.

³⁹ See [National Report submitted by the Slovak Republic](#), 19 December 2024.

⁴⁰ Provisions on minimum, just or fair remuneration are not uncommon in constitutions. Among the Council of Europe member States, provisions requiring equal pay between men and women can be found in the constitutions of Italy (Article 37), Malta (Article 14), Romania (Article 41) and Switzerland (Article 8).

75. The Venice Commission finds that the consultations which were carried out and are still scheduled by the authorities cannot be considered as “meaningful” given that they took place after the second reading, while the scheduled third reading allows only corrections of linguistic and legislative-technical mistakes, not also substantive ones. The Commission encourages the authorities to ensure, in future legislative processes, that sufficient time is allocated to inclusive consultations – as described above – before the draft legislation is submitted to the Parliament for consideration. It wishes to reiterate that the process of amending the Constitution should be conducted with the highest levels of transparency and inclusiveness – particularly when draft amendments, such as the current ones, may significantly affect key aspects of the Constitution, such as international obligations and the protection of fundamental rights. The Venice Commission encourages the authorities to ensure, in future legislative processes, that sufficient time is allocated to inclusive consultations before the draft legislation is submitted to the Parliament for consideration.

76. The Commission is of the view that the scope of the international legal obligations that the Slovak Republic undertook has already been defined by the respective treaties, principles, and subsequent practice within international legal orders to which the Slovak Republic is a member. In the view of the Venice Commission, the vague and broad formulations such as “national identity” and “cultural and ethical issues” in the draft amendments to Article 7 pose serious risks of unpredictable and arbitrary interpretation and application, undermining legal certainty and, potentially, Slovakia's respect for international obligations, including those under the ECHR and EU law.

77. The draft amendments to the Constitution reinforce a restrictive stance on adoption, favouring married heterosexual couples and considerably raising the bar for future legal reforms by embedding these provisions in the Constitution. This is not *per se* against European standards. The Venice Commission emphasises, however, that, although states have a margin of appreciation, decisions concerning adoption should always be guided by the best interests of the child and the principle of non-discrimination. Likewise, strengthening legal representatives' rights to approve or refuse children's participation in educational activities, such as sexual education, is not *per se* contrary to European standards but must be balanced against the child's right to receive objective information and the State's duty to provide accessible, non-discriminatory education.

78. The Venice Commission welcomes the constitutional guarantee of equal pay for men and women as an important step towards gender equality, while noting that effective implementation is necessary for real impact.

79. Regarding the constitutional enshrinement of a strictly binary definition of sex, the Venice Commission considers that while the choice of recognition of a third or neutral sex falls within the margin of appreciation of Slovakia, entrenching a strict binary understanding of sex in the Constitution cannot justify discrimination based on sexual orientation or gender identity in subsequent legislation or state measures.

80. In view of the above, the Venice Commission makes the following key recommendations and notes that further detailed recommendations are to be found in the text of this Urgent Opinion:

- to specify the concepts of “national identity” and “cultural and ethical issues” and to remove the qualifiers “in particular” in draft para. 6 of Article 7 of the Constitution and to repeal the draft para. 7 of Article 7 of the Constitution in order to prevent the risk of arbitrary interpretation and application undermining legal certainty, weakening the protection of human rights and conflicting with Slovakia's international obligations;
- to provide in the law that the decisions on the adoption are guided solely by the best interests of the child, based on individualised assessments and made without

discrimination, including discrimination based on sexual orientation, in accordance with ECtHR standards;

- to ensure that the provisions that strengthen legal representatives' rights over educational content are carefully balanced with the State's duty to provide accessible, objective, and non-discriminatory education, as well as children's rights to access information essential for their well-being and development;
- to delete the words "biologically determined" from draft Article 52a of the Constitution and to develop a sufficiently detailed and precise law, providing expeditious, transparent and accessible procedures for changing the registered sex marker of transgender people.

81. The Venice Commission remains at the disposal of the Slovak authorities and the Parliamentary Assembly for further assistance in this matter.