



**Organization for Security and Co-operation in Europe  
High Commissioner on National Minorities**

**Opinion and Recommendations  
of the OSCE High Commissioner  
on National Minorities on amendments to the  
“Law on the State Language of the Slovak Republic”**

The Hague, 22 July 2009

## **1. Background**

In 1995, the Slovak Parliament approved the Law on the State Language of the Slovak Republic<sup>1</sup> (hereinafter “State Language Law”). The Law attracted a lot of international attention, even in its drafting phase. And the final voting procedure took place in a strained atmosphere because the Hungarian Government and several EU actors and Member States expressed concern about some of its articles restricting human and minority rights. When eventually adopted, the State Language Law not only became among one of the most restrictive pieces of legislation in Europe at that time concerning the protection and promotion of a national language, but also raised concerns about respect of the linguistic rights of persons belonging to national minorities.<sup>2</sup>

It was not until 10 July 1999 that the Slovak authorities eventually adopted the Law on the Use of Languages of National Minorities (hereinafter “Law on National Minority Languages”) with a view to expanding guarantees to safeguard minority rights. The new Law grants all minority languages equal status with the Slovak language in all towns and villages where the minority represents at least 20 per cent of the overall population. According to the Law on National Minority Languages, persons belonging to national minorities are permitted to use their own language in all official written and spoken communications with State and local authorities where the threshold is met.

The interplay between these two pieces of legislation has always been crucial for striking the right balance between the promotion of the State language and the protection of the linguistic rights of persons belonging to national minorities in Slovakia. When the Law on National

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<sup>1</sup> Act No. 270/1995 on the State Language of the Slovak Republic.

<sup>2</sup> The first Opinion on Slovakia adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) in 2000 (ACFC/INF/OP/I(2001)001) noted that some “provisions in the State Language Law could lead to undue limitations” of the linguistic rights of persons belonging to national minorities (paras. 33-34) and welcomed the fact that “according to the Government, no sanctions have been imposed for non-compliance or violations of the said law” (para. 33).

Minority Languages entered into force, the previous imbalance was eventually addressed. Since then, a positive trend has been noticed as regards the protection of the rights of persons belonging to national minorities in Slovakia.<sup>3</sup> In spite of some persisting shortcomings and some occasional displays of stereotyping of or negative attitudes towards minorities in Slovak society and political discourse, it is generally acknowledged that recent years have marked a significant improvement in striking the required balance.

Slovak courts have challenged a few of the provisions in the State Language Law over the last decade,<sup>4</sup> while many others have been complemented by subsequent pieces of legislation on issues like language use in telecommunication and broadcasting, in the National Registry and in the press, for example.<sup>5</sup>

With a view to updating legislation, the Ministry of Culture (MoC) has submitted a draft law amending the State Language Law, which has now been in force for 13 years. It is understood that during the drafting process the Slovak authorities have allowed the involvement of representatives including from other countries to submit their comments. In spite of this open and cooperative attitude, however, the Parliament adopted the text rather quickly on 30 June 2009. The amendments were adopted before receiving the requested opinion by the HCNM. In this regard, it is noted that while there is no constraint as to the times for parliamentary debates as long as the legislative process is fully democratic, good practice suggests that potentially contentious laws should be given adequate attention and time for reflection during the drafting and deliberation process.

## **2. What will change?**

### *a) Scope of application*

Article 1.1 of the State Language Law stipulates: “The Slovak language shall be the State language in the territory of the Slovak Republic”. It proclaims Slovakian as having priority over any other languages used in the area of the Slovak Republic<sup>6</sup> and being the official language in spoken and written communications. This article reproduces Article 6.1 of the Slovak Constitution<sup>7</sup> and remains unchanged. However, the overall intention of the law to strengthen the protection of the State language is reiterated by several provisions of the law, such as article 2.1. (“State authorities, authorities of municipal administration and other bodies of public administration are obliged to protect the State language [and to] access actively to the control and observance of assessments of this law”) and the provisions on supervision and sanctions (Articles 9 and 9a). Provisions of this kind, while per se acceptable

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<sup>3</sup> See ACFC, Second Opinion on the Slovak Republic, (ACFC/OP/II(2005)004)

<sup>4</sup> See in particular the Constitutional Court’s decision no. 260/1997.

<sup>5</sup> See e.g. law no. 343/2007 (Law on Audiovisuals), law no. 453/2001 (Law on Municipal Administration), etc.

<sup>6</sup> According to the 2001 census the ethnic composition of the country’s population is as follows: Slovak 4,614,854 (85.8%), Hungarian 520,528 (9.7%), Romani 89,920 (1.7%), Czech 44,620 (0.8%), Ruthenian 24,201 (0.4%), Ukrainian 10,841 (0.2%), German 5,405 (0.1%), Polish 2,602 (0.02%), other and unknown 65,187 (1.2%).

<sup>7</sup> Article 6 paras.1 and 2 of the Slovak Constitution stipulate: “The state language on the territory of the Slovak Republic is the Slovak language” and “The use of languages other than the state language in official communications shall be laid down by law.”

under current international standards, might raise concerns in non-majority segments of the population.

Moreover, one of the fundamental amendments introduced by the new text refers to the scope of application of the current State Language Law. According to this particular amendment, the Law applies not only to State and municipal authorities, including self-government bodies, but also to “legal persons, self-employed natural persons and private individuals” (Article 1.5 of the revised version).

Such a provision might raise concerns with regard to its compliance with the proportionality requirement. While international and comparative standards do not per se forbid the provision of some restriction to the freedom of language in non-public areas with a view to promoting the State language, this should however not unduly restrict the rights of persons belonging to national minorities. In light of the aforementioned interplay between the State Language Law and other laws, including the Law on National Minority Languages, this provision should not be problematic with regard to the rights of persons belonging to national minorities. The Law itself stipulates that “unless this law provides otherwise, the use of the languages of national minorities and ethnic groups are governed by separate regulations” (Article 1.4). 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, Article 3.1 of the Law provides that the obligation for public authorities to use the State language shall be “without prejudice to the use of the languages of national minorities”, pursuant to a separate regulation. At the same time, paragraph 2 of the same article stipulates that employees, civil servants and those employed in the transport, postal and telecommunication services (plus armed 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, however, might raise concerns among persons belonging to national minorities. This example shows 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 and to consider the adoption of a comprehensive law on the rights of persons belonging to national minorities. In the meantime, the Slovak authorities should pay all due attention to the implementation of this new provision, by making sure that it is interpreted in a systematic and correct way.

#### *b) Use of languages in official communications*

As far as the use of minority languages is concerned, the State Language Law refers back to the Law on National Minority Languages (Article 3.1 of the amended version). According to the latter, these languages can be used in official communications at national and/or local level in areas where minority communities meet the threshold requirement. This is in line

with Article 34.2b<sup>8</sup> of the Slovak Constitution, which establishes the right of minorities to communicate in their mother tongue in official situations. The provision of a 20 per cent threshold is in line with international standards, as it is considered to be a reasonable limitation in most cases dealt with by the “soft jurisprudence” of the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), also with regard to Slovakia.<sup>9</sup>

The adopted amendments, however, do not solve the problem of determining whether or not the 20 per cent threshold has been reached in a given municipality. According to Article 2.2 of the Law on National Minority Languages “the list of communities pursuant paragraph 1 shall be established by decree of the Slovakian government”. At the same time, Article 2.1 of the Law on National Minority Languages refers only to the results of the 1991 census in this respect, and takes account of Slovak citizens only. Additionally, the list of municipalities in which the citizens of the Slovak Republic belonging to national minorities constitute at least 20 per cent of the population is given in Ordinance No. 221/1999 Coll., which is also based on the results of the 1991 census. The 2001 census results, however, revealed changes as regards the number of municipalities meeting the required 20 per cent threshold.<sup>10</sup> In this context, it is worth mentioning Article 10, paragraph 2 of the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM), which refers to areas that have been “traditionally” inhabited by persons belonging to a national minority. Indeed, the demographic structure of the area in question could be considered over a longer period of time to ascertain the existence of sustainable demographic trends to grant the use of minority languages and to ensure no withdrawal of linguistic facilities in certain municipalities. As noted by the ACFC’s Second Opinion on the Republic of Slovakia,<sup>11</sup> “the census results can only be regarded as one of the indicators of a national minority’s size especially when elements suggest that they do not fully reflect the real number of persons belonging to national minorities”.

In other words, while not contradicting any international standard, the proposed amendment simply reiterates the current unclear situation. It is not for the State Language Law to address the issue of how to determine whether the 20 per cent threshold has been met. However, in order to ensure a non-discriminatory implementation of the legislation affecting the use of languages (the State language as well as minority languages), it is important that, in the process of updating the legislation, the Slovak authorities pay due attention to this issue, as the census figures show a decreasing trend in people prepared to declare that they belong to a national minority. This, combined with the threshold requirement, could have a negative impact on national minorities, particularly the smaller or less concentrated ones.

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<sup>8</sup> Article 34 of the Constitution: “(2) In addition to the right to master the state language, citizens belonging to national minorities, or ethnic groups, also have, under conditions defined by law, a guaranteed a) right to education in their own language, b) right to use their language in official communications, c) right to participate in the decisions on affairs concerning national minorities and ethnic group”.

<sup>9</sup> Paragraph 83 ACFC Second Opinion on the Slovak Republic, adopted on 26 May 2005.

<sup>10</sup> In this regard, the ACFC Second Opinion on the Slovak Republic (paragraph 86) noted, on the one hand, a decrease in municipalities with the required share of the Hungarian, Roma and Ukrainian minorities and, on the other hand, an increase in municipalities with the required share of the Ruthenian minority.

<sup>11</sup> Paragraph 87 of ACFC,OP/II(2005)004.

Another amendment relating to the use of the State language affects the language obligations of civil servants. The new piece of legislation abolishes the requirement for civil servants (contained in paragraph 1 of Article 3 of the previous version of the State Language Law) to prove their knowledge of the State language orally and in writing before taking up service in a public administration. While the aim of the old provision was legitimate, as civil servants must master the State language, its implementation has given rise to some complaints over the years, leading to cases of undue discrimination against persons belonging to national minorities because of their inadequate language skills. The abolishment of the requirement in the amended law is a positive step: it can help avoid discrimination in access to the civil service for members of minority communities, while the obligation to have the required command of the State language continues to be guaranteed by other provisions, including those contained in the Constitution, in the Law on National Minority Languages and in the State Language Law.

From a systematic perspective, it would be advisable for the amended version of the State Language Law to contain a reference to language training for civil servants, in particular in municipalities where the use of minority languages in relations with administrative authorities is permitted. In this respect, it must be recalled that Article 7 of the Law on National Minority Languages stipulates: “Public authorities and their employees are not required to have a command of the minority language.” In this regard, paragraph 2 of the amended Article 3 refers to civil servants’ command of the State languages both at general and local level, including public transport and post and telecommunications services employees who shall have a good command of the State language. As noted by the ACFC’s Second Opinion on the Slovak Republic<sup>12</sup> “[t]he need for further language training and other accompanying measures, such as the recruitment of civil servants from among national minorities, should also be examined.”

Moreover, Article 3.5 of the law allows the use of a “language that meets the criterion of basic comprehensibility in relation to the State language” (i.e. Czech) in official communication (and in media, as described below). This 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 the Slovak language. 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.

Finally, as to the codification process of the State language, Article 2.2 of the State Language Law in the redrafted version would have needed further elaboration, making reference to the linguistic institutes and other sources consulted. In its current form, the law vests the authority for codification of the State language with the MoC and not with an independent institution. While the MoC should maintain the final responsibility for the process, more specific rules on the involvement of independent experts and institutions can be introduced through by-laws and administrative regulations. This could improve the transparency of the

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<sup>12</sup> Paragraph 89 ACFC,OP/II(2005)004.

whole process.

*c) Use of languages in the media*

Although it is not for the State Language Law to expand linguistic rights of national minorities, the updating of this Law should be followed by the review of other laws in order not to impair the balance between the legitimate aim to protect the State language and the rights of persons belonging to national minorities to use their language in public, social, economic and cultural life. With regard to the media, it is of utmost importance that the national minorities can fully enjoy the right to establish and maintain media in their own language and that they are granted access to broadcast time in their language on publicly funded media services. It is essential that the State authorities do not over-regulate this matter, particularly with regard to private media which, in principle, should be based on linguistic freedom.

In this context, again a complex systematic reading is required to avoid the impression of the amendments bringing inconsistency to the law, particularly after the amendments introduced by the Parliament to the original draft submitted by the MoC. In line with the overall exemption of minority languages from the scope of application of the State Language Law (Article 1.4.), Article 5.1.a allows for television programmes in languages other than Slovak, although under the condition that they are subtitled in the State language or immediately rebroadcast in the State language. While this formalises the current practice and even improves the previous provision requiring rebroadcast as a rule, the interaction between this provisions and other exceptions subsequently listed is not sufficiently clear, particularly with regard to the following exceptions for radio programmes (Article 5.1.b and Article 5.1.f). In this context, it should be reminded that Article 9 of FCNM provides for the freedom of every person belonging to a national minority “to receive and impart information and ideas in the minority language, without interference by public authorities”,<sup>13</sup> and principle no. 10 of the HCNM Guidelines on the use of minority languages in the broadcast media states that “measures to promote one or more language(s) should not restrict the use of other languages” as well as “measures to promote any language in broadcast media should not impair the enjoyment of the rights of persons belonging to national minorities”.<sup>14</sup> 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. A stricter regulation of (public and private) television broadcasting in minority languages seems not entirely in line with the overall minority-friendly provisions related to other sectors of the media, including printed media and cultural booklets in the languages of national minorities (Article 5.5.).

According to the amended text, it emerges that subparagraphs g), h) and i) of Article 5.1 allow the use of the Czech language in television and radio broadcasts in Slovakia in general,

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<sup>13</sup> Article 9 FCNM further stipulates that the States “shall ensure, as far as possible [...] that persons belonging to national minorities are granted the possibility of creating and using their own media” (Article 9.3.) and that the States “shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism” (Article 9.4.).

<sup>14</sup> Guidelines on the use of Minority Languages in the Broadcast media, October 2003 (available at [www.osce.org/hcnm](http://www.osce.org/hcnm)).

based on the understandability criterion. As stated above, this criterion does not raise concerns as to the principle of equal treatment and non-discrimination.

*d) Use of languages in other areas*

As to education, no major amendments have been suggested. Article 4.3. makes it clear that in schools and other institutions providing education in the language of national minorities the principle of bilingualism in the documentation (both of pedagogical and other nature) applies. This provision introduces a clearer legal basis and does not raise concerns as to its contents. However, it would be advisable to consider introducing in the law a reference to language training for teachers, in particular in municipalities where a particular minority represents at least 20 per cent.

As regards criminal and civil court procedures, the amendments make clear that the compulsory use of the State language in judicial proceedings shall be without prejudice to the rights of persons belonging to national minorities (Article 7.2.), in accordance with, *inter alia*, Article 6 of the European Convention on Human Rights and the HCNM Oslo Recommendations regarding the Linguistic Rights of National Minorities (Oslo Recommendations).<sup>15</sup>

Furthermore, with regard to geographical names, Article 3a of the amended version contains an obligation to display municipality and streets names, as well as other information related to official and cadastral maps, in the State language, without prejudice of the separate regulations governing the use of topographic names in the languages of national minorities.<sup>16</sup> This amendment does not raise any concern from the point of view of minority rights, as the second part of Article 3, following the Oslo Recommendations, expressly safeguards place and street names in the languages of national minorities where their numbers meet the threshold.<sup>17</sup>

As to the use of the State language by the police and military services, no amendments have been suggested and the Law on National Minority Languages remains silent in this regard too. This means that Slovak will continue to be used as the exclusive language of police and armed forces. While this is in line with international standards and practice, the authorities might consider inserting a reference regarding the use of the minority language in areas with a high concentration of national minorities. Following Recommendation 13 of the HCNM Recommendations on Policing in Multi-Ethnic Societies, it is suggested that police “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.”

Article 3.3.c of the amended law stipulates that records and documents of churches and religious communities intended for the public shall be in the State language. It is reminded

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<sup>15</sup> Recommendation 18: “In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this minority should have the right to express themselves in their own language in judicial proceedings, if necessary with the free assistance of an interpreter and/or translator”.

<sup>16</sup> Laws no. 191/1994 and 184/1999.

<sup>17</sup> See also Article 4.1 of the Law on National Minority Languages.

that principle 5 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998) acknowledges that the State may require that certificates and documents issued by religious authorities which also pertain to the civil status and which have legal effect be kept also in the official language of the State. This requirement, however, shall not extend beyond what is strictly necessary for registry purposes and the implementation of this provision of the amended law shall be carefully monitored.

Finally, the terminology used throughout the law might raise some problems of correct interpretation as it does not seem to be always consistent. When special provisions derogating from the general rule of using the State language are provided, the terminology differs. It is understood that when the term “other languages” is used, this includes languages of national minorities, while the term “languages of national minorities and ethnic groups” covers the languages included in the scope of application of the European Charter for Regional or Minority Languages (e.g. Articles 1.4., 4.4). Such specification would help a correct reading and interpretation of the law. Moreover, the difference between the terms, “other languages in official international communication” (Article 3.1.) and “another language” (Article 3.4.)” is not entirely clear. It is suggested to streamline the terminology, taking into account the rights of persons belonging to national minorities.

*e) Supervision and sanctions*

The redrafting of the section on supervision and sanctions (Articles 9 and 9a) has introduced some change to the previous regime. Overall, the amendments aim to strengthen the supervision of the implementation of the Law by introducing fines in cases of non-compliance.

While it is legitimate to impose sanctions for the violation of the provisions on the use of the State language, it is essential that these do not constitute discrimination against persons belonging to national minorities. Nothing in the proposed amendments indicates that the sanctions should be applied to persons belonging to national minorities (nor to those belonging to the majority) for their incorrect use of the State language.

However, signs and messages directed to the public such as shops, restaurants and alike are covered by the provision (Article 9). The provision aims at safeguarding the use of the State language in these facilities, although minority languages can also be used alongside the State language. In case of non compliance, fines could be imposed (Article 9a).

The combined effect of the constitutional principles, the State Language Law and the Law on National Minority Languages implies that in areas where the threshold for the use of minority languages is met, the utilization of minority languages can never be exclusive: minority languages can be used only alongside the State language, which is the only official language of the State.

The provision of a bilingual regime is not in contrast with international standards. However, the imposition of fines might easily create or exacerbate tensions and should in principle be avoided. Where introduced, it should be handled with extreme care by the authorities. Therefore, sanctions should be exceptional, clearly defined and regularly monitored as to their effect.

In analogous cases when the authorities have tightened the protection of the State language imposing fines in case of non compliance, the courts have always invited the Parliament to appropriately balance between the right of promoting the language and the individual's freedom of expression. This was clearly stated, for example, by the French *Conseil Constitutionnel* which struck down most of the sanctions provided by the law against the use of foreign languages in private facilities.<sup>18</sup> Similarly, the Canadian Supreme Court struck down the first version of the Quebec's *Charte de la langue française* in 1979 and forced amendments in order to promote the use of French in Quebec without unduly restrict the right to use other languages, especially in private facilities.<sup>19</sup> Ultimately, as the German Constitutional Court put it, language is a fundamental freedom and should therefore, as a rule, be subject to the less possible degree of normative regulation.<sup>20</sup>

For these reasons, a careful implementation of the provisions on monitoring and sanctioning is mandatory with regard to the areas where national minorities live traditionally or in substantial numbers. In this context, the final text adopted by the Parliament seems to have made the provision stricter instead of more flexible, which is to be seen as a negative development: instead of a gradual system of sanctioning, leading to the imposition of fines only as last resort (as originally proposed by the MoC), the reference to a "repeated" written note of breach has been removed. It is reminded that sanctions should be the last resort and their provision should be made more difficult and not easier. It is recommended that at least the implementation of the provisions will be regularly monitored and, where appropriate, reviewed after a certain period of time. In particular, the increase of administrative fines should be studied after a year as to whether it will have generated the expected results particularly in the areas inhabited by persons belonging to national minorities.

Moreover, Article 9a.1 provides for a too wide range in the amount of the fine that could be imposed for non compliance with the law and it does not give any indication as to the criteria for choosing on a scale that ranges from 100 to 5.000 EUR. While reference is made to the constitutional criteria of proportionality (indirectly evoked by the reference to the Administrative Code), greater clarity in this regard is required in order to limit the risk of abuses. It should also be carefully considered whether this provision reflects the limited capacity and resources that smaller minority communities may face.

Finally, in implementing the amended Law the Slovak authorities should be aware of the potential impact (even if it is only a perception) of a sanctionatory system that is directed also at persons belonging to national minorities. In this field, therefore, a particular degree of flexibility in the implementation of the Law should be mandated. Taking into consideration that the HCNM does not have detailed data on reported sanctions for non-compliance or violations of this Law in other areas of its scope of application, while it is important to sanction potential violations of the provisions, a degree of flexibility must be guaranteed in order to avoid excessive repression. Finally, since the wording of the provisions is rather vague, further attention is needed to avoid arbitrary interpretation.

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<sup>18</sup> Conseil Constitutionnel, Dec. 94-345 of 29 July 1994.

<sup>19</sup> Attorney General of Quebec v. Blaikie et al. [1979] 2 S.C.R. 1016.

<sup>20</sup> BVerfGE 98, 218, Rechtschreibreform (14.07.1998).