

Appendix II: Comments by the Slovak authorities

Comments on the Report of the Committee of Experts on the application of the European Charter for Regional or Minority Languages

On the basis of the provision of Article 16(3) of the European Charter for Regional or Minority Languages (hereinafter referred to as the "Charter"), Slovakia hereby presents comments on the report on the application of Charter provisions in Slovakia:

The Slovak Republic thanks the Committee of Experts of the Council of Europe for preparation of the above-mentioned report and appreciates the effort of unbiased assessment of the practical application of individual undertakings adopted and the cooperation with the Committee of Experts during their on-the-spot visit to Slovakia in September 2004. Slovakia entered very ambitious undertakings with respect to both the number of provisions opted for and the number of languages chosen. It is understandable that not all issues can be resolved in a short time and that the solutions cannot be implemented immediately. For the application of the existing international undertakings, the Slovak Republic will continue creating an adequate legal framework and conditions for their practical implementation.

The Committee of Experts proposes the revision of the 20% proportion of persons speaking minority languages in the population of a municipality determined as the threshold for use of the minority languages in official communications. The judgement as to what a state being a party to the Charter considers to be a sufficient number justifying the application of the undertaking of enabling the use of a minority language in official contacts is in our opinion exclusively the right of the state. The Slovak Republic will come back to this issue within the framework of the preparation of its second implementation report.

The Explanatory report to the Charter stating on Art. 1(b), ("territory in which the regional or minority language is used" means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures), that The territory referred to is that where a regional or minority language is spoken to a significant extent, even if only by a minority, and which corresponds to its historical base. As the terms used in the Charter are flexible in this respect, it is up to each state to define, more precisely and within the spirit of the Charter, the understanding of the term "territory of a regional or minority language", taking into consideration the provision of Article 7(1.b) concerning the territory of regional or minority languages. The key expression in this provision is the "number of people justifying the adoption of the various protective and promotional measures". The authors of the Charter avoided determining an accurate percentage of regional or minority language speakers subject to the measures laid down in the Charter. They preferred leaving the solution upon the states within the spirit of the Charter.

The Slovak Republic, in its declaration when adopting the Charter, set a threshold, which it considers adequate with respect to the application of the undertakings under Article 10 of the Charter. This threshold is expressed as a percentage of 20% of persons belonging to national minorities in the municipality. In this respect, the Slovak Republic took into consideration the interests of the persons belonging to national minorities in using the minority languages in official contacts, the situation of individual minority languages and the real need of their protection from becoming extinct, but also the tasks, justified interests, needs, economic effectiveness and other criteria on the part of the state.

The above-mentioned proportion is based on the high number of national minorities in the territory of the Slovak Republic, their high proportion in the population of the Slovak Republic, as well as the structure of settlement of the Slovak Republic, which is characterised by a high number of municipalities with small populations.

In this respect we take the liberty to ask to take these argument into account and modify the above-mentioned recommendation of the Committee of Experts on this issue.

On the proposal of the recommendation of reconsidering the limitations of use of minority languages caused by the provision of the State Language Act, we take the liberty to draw the attention to several important facts. The first fact is that the international legal regulation in the field of minority language protection provides that the states that are parties to the respective international legal documents are to ensure an adequate degree of protection to minority languages from their extinction. Yet it does not envisage the minority

languages to be used in the same scope as the state language and does not envisage making these languages “equal” to the state language.

Another fact is that the same principle and an international standard is respected also by the existing domestic legislation of the Slovak Republic, particularly by the Constitution of the Slovak Republic, especially Art. 6, Art. 34, and other relevant valid legal regulations. The Constitution of the Slovak Republic is the fundamental law with the highest legal force followed by constitutional laws, which can amend the Constitution. Laws are of lower legal force. The laws are of mutually equal force. Precedence over Slovak Republic’s laws may be taken only by the Constitution of the Slovak Republic, by constitutional laws or by an international treaty under conditions laid down by the Constitution of the Slovak Republic. To be able to distinguish as to which law is applicable or which law will be used for the given case, there are general principles in legislation, such as the principle that a more recent law amends the preceding law or the principle of the relationship of a general law to a special law. Act No. 270/1995 on the State Language provides for the status of the Slovak language as the state language throughout the territory of the Slovak Republic. This law does not provide for the use of minority languages, which is specially mentioned in one of its introductory provisions (Section 1(4)). In this respect, Act No. 184/1999 on the Use of Minority Languages has, vis-à-vis Act No. 270/1995 on the State Language, the status of a special law, i.e., *lex specialis*. That means that the special law will always be applied in a situation envisaged by such a special law and therefore prevents the use of the general law, i.e., *lex generalis*. For the provisions of the law on the use of minority languages to be applicable, it is not necessary to amend the provisions of the State Language Act. Legislative and legal principles apply automatically in the system of law.

In addition to the above, the fact can be mentioned that the opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities includes, *inter alia*, a positive conclusion that in practice, there is no restriction of the exercise of language rights of the persons belonging to national minorities through undue interpretation of the 1995 State Language Act.

The Slovak Republic, in its declaration when adopting the Charter, stated *inter alia* that it would apply the undertakings under the Charter in accordance with the Constitution of the Slovak Republic and without limitation of the obligation of using the state language. According to the principles of the international treaty law expressed in the Vienna Convention on the Law of Treaties (1969), Art. 31(2) b), the context for the purpose of the interpretation of a treaty shall comprise any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

With respect to the above, we take the liberty to request that the Committee of Experts’ recommendation on this issue be dropped or its formulation modified.

The Committee of Experts concludes that in the field of justice a general problem is the absence of specific legal rules regarding the use of regional or minority languages. The right for regional or minority language speakers to use their language even if they understand Slovak is according to the Committee of Experts not guaranteed. The Committee concludes that there may be some degree of use of the regional or minority languages in practice, owing to favourable local conditions, but there is a need to complete and improve the legislative framework in the field of justice.

In this respect we take the liberty to mention that Article 9 of the Charter clearly states that the parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice. The Explanatory Report says on this point that although the purpose of the Charter in this issue is to enable the use of minority languages even beyond the limits of practical necessity, when the person speaks the state language, on the other hand, it is not only the aspect of human rights, i.e., the persons’ right to choose whether to use their minority language or the state language before the court and, at the same time, the obligation of the state to ensure a proper exercise of this right. The objective of the Charter is to give the states some discretion as to whether or not to permit the exercise of this right and, at the same time, to limit its application to certain judicial districts. Taking this undertaking into consideration in all its complexity, we are of the opinion that the present wording of Slovak Republic’s legislation corresponds to the contents of the Slovak Republic’s undertakings entered into in the Charter and we do not consider the amendment to be necessary.

With respect to the above, we take the liberty to request that the Committee of Experts' recommendation on this issue be dropped or its formulation modified.

On the recommendation to guarantee women the right to adopt or use family names in regional or minority languages we state that the Slovak Republic's law does grant this right. Pursuant to Section 4a of Act of the National Council of the Slovak Republic No. 300/1993 on Names and Surnames as amended by Act No. 13/2006, if a child is also a citizen of another state, he/she may get a surname or surnames in accordance with such state's law or tradition. In accordance with Section 6(4) of the cited law, the change of surname will be permitted always when a citizen of the Slovak Republic, whose surname is concerned, is also a citizen of another state and the change is to result in a surname in the form that is in accordance with the law and tradition of such other state. If the person is a citizen of only the Slovak Republic, the administrative authority will consider permitting the change of the surname.

According to the provision of the Section 7(2) letter d) of the Law 300/1993 on Names and Surnames the permission for the change of a surname is not required provided that the change concerns the registration of a female surname of a person other than the Slovak nationality without the Slovak grammatical suffix. For the record in the register, this kind of change requires only the written declaration of a person in question or its legal guardian.

Pursuant to Section 16 of Act of the National Council of the Slovak Republic No. 154/1994 on Registry Offices as amended, female surnames of a person of other than Slovak nationality shall be registered without the Slovak suffix,

- a) if requested by the parents when registering the surname of their child of female gender in the book of births pursuant to Section 13(1) or by the adoptive parents when registering the surname of an adopted child, if adoption pursuant to a special regulation is involved,
- b) if requested by the woman upon registration of marriage in the book of marriages pursuant to Section 14,
- c) if requested by the woman in relation to registration of the decision to change the surname pursuant to a special law.

Pursuant to Section 19 of the Act referred to,

(1) The official extract from the book of births (hereinafter referred to as the "birth certificate") includes

- a) document name and indication of the registry office, which issues the document,
- b) day, month, year, place of birth and personal number of the child,
- c) child's first and last name,
- d) child's gender,
- e) first and last name, birth name, date and place of birth, citizenship and parents' personal numbers,
- f) day, month and year of issuing the birth certificate, signature indicating the first name, last name and function of the authorised person and an imprint of the registry office's stamp.

(2) The official extract from the book of marriages (hereinafter referred to as the "marriage certificate") includes

- a) document name and indication of the registry office, which issues the document,
- b) day, month, year and place of marriage,
- c) names, surnames, and birth names, if applicable, of the couple and their personal numbers,
- d) day, month, year and place of birth of the couple,
- e) names, surnames, and birth names, if applicable, of the couple's parents,
- f) couple's agreement on the surname and an agreement on their common children's surname; the agreed surnames being indicated both in male and female form,
- g) day, month and year of issuing the marriage certificate, signature indicating the first name, last name and function of the authorised person and an imprint of the registry office's stamp.

(3) In the birth certificate of a person of other than Slovak nationality, whose name was not registered in the registry before 31 December 1993 in his/her mother tongue but rather in a Slovak equivalent, the name shall be indicated in his/her mother tongue in Latin script, if the person requests so in writing; this fact shall be recorded in the registry in writing. The application must include a representation on

the applicant's nationality. All subsequent official extracts and certificates shall be made using this form of the name.

(4) A person, whose name is registered in the registry in a language other than Slovak, and a later extract from the registry was made with the name in a Slovak equivalent, can apply for an extract from the registry with the name in the original form. The registry office is obliged to accommodate such a request.

(5) The official extract from the book of deaths (hereinafter referred to as the "death certificate") includes

- a) document name and indication of the registry office, which issues the document,
- b) day, month, year, place of death and personal number of the deceased; last day of the month of death of a deceased person found, for whom a medical doctor determined only the month of death, or the last day of the year of death of a deceased person found, for whom a medical doctor determined the year of death,
- c) name, surname, and birth name, if applicable, of the deceased,
- d) gender and permanent residence of the deceased,
- e) day, month, year and place of birth of the deceased,
- f) day, month and year of issuing the death certificate, signature indicating the first name, last name and function of the authorised person and an imprint of the registry office's stamp.

(6) In the birth certificate or marriage certificate of a woman concerned by this official extract, her surname shall be indicated without the Slovak suffix, if she requests so in writing; this fact shall be recorded in the registry. All subsequent official extracts and certificates of information written in the registry shall be made using this form of the surname. The written application pursuant to the first sentence shall be enclosed in the collection of documents.

(7) The written application pursuant to paragraphs 3, 4 and 6 may be filed, if a minor is involved, by her parents.

(8) The registration of a modification of name and surname form pursuant to paragraphs 3, 4 and 6 in an official extract is not subject to the provisions of the special law on modification of name and surname and this act is not subject to the stamp duty pursuant to the special law.

(9) The application for registration of a woman's surname with a Slovak suffix in an official extract made after the right pursuant to paragraphs 3, 4 and 6 or pursuant to Section 16 has been exercised is deemed to constitute an application for modification of a surname pursuant to a special law.

The above-mentioned recommendation is fully implemented in the Slovak Republic on the basis of Act of the National Council of the Slovak Republic No. 154/1994 on Registry Offices as amended as well as the Law 300/1993 on Names and Surnames, and no complaint or comment has been raised in this respect.

In this regard we take the liberty to request that the above-mentioned recommendation of the Committee of Experts on this issue be dropped.

Considering the Committee of Experts' proposal of the recommendation on the issue of persisting cases of unjustified enrolment of Roma children to special schools we state that in the educational system of the Slovak Republic, there are no ethnically oriented schools or schools that would be segregated in any way from the mainstream educational system. The network of special schools provides education of pupils with special educational needs, whose disability prevents them from being educated in other schools. Education obtained at special schools (e.g., schools for the visually impaired, for the hearing impaired, for the physically impaired, etc.), except for education obtained at special schools for pupils with mental impairment, is equivalent to education obtained at elementary and secondary schools.

Enrolment of pupils to special schools is regulated by Decree of the Ministry of Education of the Slovak Republic No. 212/1991 on Special Schools as amended. Pursuant to Section 14(2) of this Decree, enrolment is decided by a school's principal on the basis of a proposal from an expert commission (including a psychologist, a special pedagogue, and other professionals) and with consent from pupil's parent or guardian. If cases of incorrect enrolment of children occur, that means that violation of law is involved or deficiencies in diagnostics of the children. A frequent reason for enrolment of Roma children to special elementary schools from the 1st grade is that there is only a special school available in the municipality and children's parents refuse to let them travel to the next municipality. A proportion of Roma parents prefers

their child to attend a special elementary school from economic reasons (e.g., lower commuting costs for the nearby special school, financial advantages granted to such schools), but also from psychological and social reasons (the parent wants the child to attend the same school as his/her elder sibling or other Roma children; does not want his/her child to go to a place where he/she would have to be ashamed for poorer clothing, etc.). A problem also appears to be the attitude of children's parents to education. Particularly with socially poorer strata of Roma population, the standard is non-provision of support to children aimed at enabling them to achieve a level of education as high as possible. There is a certain problem also in relation to location of special schools. In Slovakia, there are 138 special schools without specific orientation on a specific impairment. The greatest number of them is in the Prešov and Košice regions (24 each) with the largest concentration of Roma population. Many of elementary special schools are in small municipalities with comparably large Roma settlements.

As part of the Phare SR0103.01 project "Reintegration of socially disadvantaged children from special schools into standard primary schools", psycho diagnostic methodologies of School Readiness Test and RR Screening were developed with participation of staff from the Research Institute for Child Psychology and Pathopsychology (hereinafter "VÚDPaP").

For each test within the project, there were two seminars organised for staff of the pedagogical psychological counselling centres and for teachers of schools participating in the research. Information on the project is available at <http://home.nextra.sk/vudpap/reintegracia/>. Both tests were distributed to 67 pedagogical psychological counselling centres in June 2004. On running basis, during November – December 2004, the work with tests was examined, which tests were applied to small samples of children from socially disadvantaged environment comparing the results with those obtained by the children in other, commonly used methodologies. VÚDPaP is preparing detailed statistical and qualitative assessment of data obtained and processing of proposals for further procedures in this respect by the end of 2005. The activity is reflected in the research task P-93 – Implementation of differential diagnostic methodology for Roma pupils in counselling practice.

As a result of a limited number of tests, the methodologies were not sent to all district pedagogical psychological counselling centres but only to selected ones in locations with high concentration of socially disadvantaged Roma children and where difficulties in communication exist. In April 2005, the Ministry of Education arranged additional printing and distribution of these tests so that all pedagogical psychological counselling centres already have them and where there is a high concentration of socially disadvantaged Roma children, they have the tests in sufficient amounts. The Ministry of Education of the Slovak Republic issued the Methodological Guideline No. 12/2005-R of 20 July 2005, which provides for the procedure for pedagogical psychological counselling centres in assessment of school readiness of children from a socially disadvantaged environment in enrolment for the 1st grade of an elementary school.

On the basis of generally binding legal regulations in education and using new diagnostic tests it should not happen that a child without a mental impairment is enrolled, without justification, in a special elementary school for pupils with mental impairment.

Since 10 February 2006, the Methodological Guideline No. 3/2006 on Implementation of School Integration of Pupils with Special Educational Needs at Elementary Schools and at Secondary Schools came into force, adopted by the Ministry of Education on 24 January 2006. This Guideline governs elementary schools, secondary schools and counselling facilities that provide or participate in school integration of pupils with special educational needs. The Guideline further specifies the relevant provisions of the School Act concerning pupils with special educational needs.

On 1 January 2006, the Methodological Guideline No. 12/2005, which provides for the procedure for pedagogical psychological counselling centres in assessment of school readiness of children from a socially disadvantaged environment in enrolment for the 1st grade of an elementary school, came into force, adopted by the Ministry of Education on 20 July 2005. This guideline provides for the procedure for pedagogical psychological counselling centres in assessment of school readiness of children coming from a socially disadvantaged environment after reaching the age of six years, in enrolment for the 1st grade of an elementary school. Children, that are found to have significant deficiencies in communication in the school's language of instruction upon enrolment for the 1st grade of an elementary school, need to be examined using individual psychological methodologies with the purpose of determining the possibility of their enrolment and ensuring adequate conditions for their education.

The finding of a reduced level of a child's psychosocial development or insufficient knowledge of the school's language of instruction constitutes a reason for submitting a proposal to the competent authority of state administration in education, which, with consent from child's parent or guardian, shall decide on his/her enrolment in the zero-grade of the elementary school. The identified areas of child's lagging enable his/her inclusion in specific stimulation programmes organised by a pedagogical psychological counselling centre.

If the diagnostic examinations of the child from a socially disadvantaged environment exclude mental impairment of the child, the pedagogical psychological counselling centre shall not propose such child for enrolment in a special elementary school.

The Government of the Slovak Republic realises that improvement of Roma's educational level including elimination of unjustified enrolment of Roma children in special schools is a key to resolution of problems of Roma communities also in other fields. The issue of upbringing and education of Roma children are specifically dealt with by multiple conceptual and programme documents mentioned in the evaluation report. Speeding up the implementation of the Romany language curricula is possible only provided that there are a sufficient number of pedagogues teaching in Romany available and provided that the project of the State Pedagogical Institute concerning verification of the Romany language, literature and Romany culture curriculum's efficiency at elementary and secondary schools is completed.

Conditions for teaching in Romany mother tongue have been created through experimental verifications approved by the Ministry of Education of the Slovak Republic until 2009 performed by the State Pedagogical Institute and aimed at verification of syllabi, creation of curricula and educational standards for the subjects of Romany language and literature and Romany culture for elementary schools, eight-grade grammar schools, and for secondary schools:

Experimental verification of Romany language and literature curricula at elementary and secondary schools approved by the Ministry of Education of the Slovak Republic on 14 April 2003 under the number 1999/2003-44. Experimental verification of the subject of Romany culture at the second level of elementary schools (grades 5 to 8) and at secondary schools approved by the Ministry of Education of the Slovak Republic on 15 April 2004 under the number CD-2004-5211/18824-3:097. The State Pedagogical Institute performs a project with the support of the European Social Fund entitled "Increase of the qualification potential of Roma community members through introduction of a new specialisation – Romistics in the system of secondary school education"

To provide teaching of Romany mother tongue at elementary and secondary schools, the Ministry of Education of the Slovak Republic approved the "Temporary compensatory measures with the objective of training a sufficient number of pedagogues teaching in the Romany language" under the number CD-2004-7613/14980-1:097 of 28 June 2004, which are presently being implemented by the State Pedagogical Institute. These are available on the website of the Ministry of Education www.minedu.sk – "regionálne školstvo" (Regional Educational System) – "oddelenie výchovy a vzdelávania rómskych komunití" (Department of Upbringing and Education of Roma Communities). In March 2005, the first 30 graduates received accreditation from the Minister of Education of the Slovak Republic. Partial evaluation of project implementation's success takes place every year through Annual Reports of the State Pedagogical Institute – the coordinator of the experiment.

In the preparatory phase of the project, seminars and training courses took place, the objectives and tasks being: to agree a procedure for works in project implementation, to determine limits for creation of syllabi, to consult the contents of the project's pilot phase, consulting with project's expert sponsors from universities (Faculty of Philosophy, Charles University, Prague; Department of Roma Culture, University of Constantin the Philosopher in Nitra), establishing an archive of documents, and preparing educational activities for project authors and implementers.

An important activity in the preparatory phase of the project was also the International Seminar in Strasbourg in May 2003 with participation of experts from 19 European countries and from the Council of Europe. The seminar participants included a representative of the State Pedagogical Institute – a coordinator of the project. The objective of the seminar was to consider the position of Roma in the participating countries and the status of education of Roma children and youth, the use of the Romany language as a mother tongue, second or foreign language at educational institutions, use of Roma culture (literature, music...) in upbringing and education of Roma children and youth, situation in publishing of textbooks, teaching, didactical and methodological materials, training and education of teachers, and language research.

For several years now, Slovakia has been successfully implementing projects of zero-grade (a project for children from socially disadvantaged environment, which, in two-years' cycle, enables mastering the curriculum of the 1st grade of an elementary school) and the project of teacher's assistant in upbringing and education of children and pupils with special educational needs at pre-school facilities, at elementary schools and at special elementary schools.

We take the liberty to respond to the Committee of Experts' recommendation in Part II of the Report, item 55, encouraging the Slovak Republic to support the establishment of a cultural organisation of Ruthenian-speakers. Such cultural organisation has been in existence since 1990 and its name is "Rusínska obroda" (Ruthenian Revival). It has twelve district and municipal organisations and publishes a monthly called InfoRusín. It organises over 50 cultural events every year. Rusínska obroda also has a representative at the Slovak Republic's Government Council for National Minorities and Ethnic Groups, which is an advisory, initiative a coordinating body of the Government for state policy with respect to ethnic groups. However, in addition to Rusínska obroda, there are more Ruthenian organisations, such as "Združenie inteligencie Rusínov Slovenska v Bratislave" (Association of Slovakia's Ruthenian Intelligentsia in Bratislava), "Spolok Rusínskej mládeže na Slovensku" (Federation of Ruthenian Youth in Slovakia), "Spolok rusínskych spisovateľov" (Federation of Ruthenian Writers), "Divadlo Alexandra Duchnoviča" (Alexander Duchnovič Theatre), Nadácia Drevené chrámy pod Duklou (Preservation and Restoration of Cultural Monuments of the Wooden Churches of Dukla Foundation), "Múzeum moderného umenia Andyho Warhola" (Andy Warhol Museum of the Modern Art), "Rusínske obce pod Duklou" (Rusyn Villages Under the Dukla), "Rusínske bratstvo na Slovensku" (Ruthenian Brotherhood in Slovakia).

The Government of the Slovak Republic is aware of the multiethnic nature of the Slovak society and therefore, in its policy statement of November 2002, it committed to fight all forms of intolerance and implement, in the practice, the approved diction of the European Charter for Regional or Minority Languages. Working versions of a draft law on funding of national minorities' culture and a draft law on national minorities were prepared.

Moreover, the Government of the Slovak Republic committed to guarantee civil freedoms and general development of human rights as well as to fight against all forms of intolerance. To ensure these activities, it regularly approves the Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance, which is the only comprehensive and systematic tool of the Government of the Slovak Republic in the field of prevention of discrimination and intolerance with the objective of fulfilling both internal and international requirements for creation of a tolerant and democratic state, development of multicultural nature of the society, increasing the tolerance and preventing all forms of discrimination through various activities of the competent ministries, non-governmental organisations and other entities dealing with these issues. In the framework of performing the agenda of the Action Plan, the Government of the Slovak Republic participates in implementation of numerous activities of non-governmental organisations and state authorities in the interest of ensuring development of a multi-cultural society and of better understanding and mutual knowledge of population groups speaking minority languages with the majority, Slovak-speaking population. Events of this nature contribute to the development and knowledge of the variety of cultures of individual national minorities and thereby to the improvement of tolerance, to the creation of multi-cultural environment as well as to the support of the process of inclusion in the majority society.