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OSCE

High Commissioner
on National Minorities

His Excellency
Mr Juraj Schenk
Minister for Foreign Affairs
of the Slovak Republic
Stromová 1
833 36 BRATISLAVA
Slovak Republic

Reference:
No 414/96/L

The Hague,
26 February 1996

Dear Mr Minister,

May I thank you first of all for all the help your Ministry has provided once again to the team of experts and to me when we visited Slovakia on 8-10 January. This greatly facilitated our task.

After having received the report of the experts, I take the liberty to submit to your Government, as I did before, a number of comments and recommendations. I might add some more at a later date if new legislation relating to minority issues would be submitted to the National Council.

Permit me to begin with some suggestions regarding linguistic issues. The Law on the State Language adopted on 15 November 1995 states (article 1, para. 4) that the usage of languages of national minorities and ethnic groups will be dealt with in separate legislation. On the other hand, however, article 12 of the Law states that Law 428/1990 on the Official Language of the Slovak Republic is null and void, including section 6 of that law which stipulated that, if persons belonging to a national minority constitute at least 20% of the population of a town or village, they have the right to use their language in such towns and villages in official communications. However, the right to use a minority language in official communications has been laid down in

article 34, para. 2, sub. b, of the Slovak Constitution "under provisions fixed by law". As long as new legislation on this subject is not yet in force, there is, therefore, a legal vacuum. To my mind, it would also be wrong to conclude that mere accession to the European Charter for Regional or Minority Languages would fill this vacuum; domestic legislation on the basis of provisions of the Charter would in any case be necessary. Against this background, I welcome the assurances given by a number of governmental interlocutors during my visit that new legislation on this issue is being prepared and that, in the meantime, persons belonging to national minorities can count on the protection of the relevant article in the Constitution and that their rights would not be affected in practice.

As far as the new legislation regarding the use of minority languages in official communications is concerned, I would recommend not to use the formula favoured by one of my governmental interlocutors, consisting of the abolition of any percentage on the one hand and, on the other hand, the obligation to add a translation in the State language to a communication in the minority language. Allowing the minority language for official communications, while requiring the State language as a parallel language, robs article 34, para. 2, sub. b, of its meaning. This view is shared by three constitutional experts whom I consulted on this question: Prof. Constance Grewe of the Faculty of Law of the University of Caen, Prof. Martin Scheinin, Professor of Law (Constitutional Law) at the University of Helsinki, and Prof. Rüdiger Wolfrum, Director of the Max Planck Institute of Comparative Public and International Law. They each, independently of one another, came to the conclusion that such a formula would not be compatible with the said article of the Constitution.

I would also recommend to allow the use of the minority language in official communications when persons belonging to a national minority constitute at least 20% of the population of a municipality, the same percentage, therefore, as was used in the old law on the official language. Increasing this percentage would lead to a curtailment of the rights of persons belonging to national minorities in Slovakia which would in my view be difficult to justify.

During my recent visit to your country I was struck by the intensity of the debate on the question of territorial autonomy on an ethnic basis. Much of the discussion was concentrated on article 5, para. 4, of the treaty on good neighbourliness and friendly cooperation between the Slovak Republic and the Republic of Hungary which states, i.a., that both parties will apply as legal obligations the norms and political commitments enshrined in Recommendation 1201(1993) of the Parliamentary Assembly of the Council of Europe with respect to individual and human rights, including the rights of persons belonging to national minorities. Attention has been especially concentrated on article 11 of the recommendation, which states: "In the regions where they are in a majority the persons belonging to a minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state". In my view, there is no doubt that this article, which mentions various options, cannot be interpreted as imposing a legal obligation on Slovakia to introduce territorial autonomy on an ethnic basis. Article 12 of the recommendation clearly refers to states where collective rights do exist, which is not the case in Slovakia. It does not impose a legal obligation on Slovakia to recognise collective rights.

On the other hand, I would recommend that the legislation which your Government is now preparing on the protection of the state will be formulated in such a way that it does not make propaganda for such an autonomy a punishable act. In this respect, I refer to article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to which Slovakia has acceded. Article 10, para. 1, of that Convention states that everyone has the right of freedom of expression, a right which includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Para. 2 of article 10 makes it clear that some restrictions of this basic right are allowed, i.a. in the interest of national security, but only if prescribed by law and if necessary in a democratic society. Generally speaking, it seems to me difficult to maintain that making use of the right of freedom of expression in order to promote the concept of territorial autonomy would constitute a threat to the security of the State. Even more so, because the OSCE Copenhagen Document on the Human Dimension, while emphasizing territorial integrity (para. 37), does mention territorial autonomy as a possible option (para. 35) and, therefore, while not entailing a commitment to introduce territorial autonomy, clearly takes the view that territorial autonomy and territorial integrity are not incompatible.

Fears that persons belonging to the Hungarian minority might cause damage to the interests of the State also seem to have inspired the following sentence in the explanatory memorandum on the law on the State language: "The spirit of disloyalty towards Slovak statehood also dominates the Hungarian language press published in Slovakia" Permit me to make the following comments. It goes without saying that citizens belonging to national minorities, just like the other citizens of Slovakia, have the duty to obey the laws of the country and are only allowed to try to change existing legislation by legal means. On the other hand, I would expect that your Government will agree that it would be undesirable to amend the penal code in such a way that articles in the press and statements before electronic media which are perceived to show disloyalty towards the State will be made a punishable act. Given that it is virtually impossible to define where criticism ends and where disloyalty begins, the danger would be great that new formulations of the law would go beyond the restrictions on the freedom of expression permitted under article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

On the question of the forthcoming legislation on the protection of the State in general, I have no doubt that your Government will keep in mind article 11 of the Slovak Constitution which states "international instruments on human rights and freedoms ratified by the Slovak Republic and promulgated under statutory requirements shall take precedence on national laws provided that the international treaties and agreements guarantee greater constitutional rights and freedoms".

Finally I should like to make some comments on the "Report on Regional and Nationality Culture" which the Ministry of Culture published in 1995. In the paragraphs on the periodical press, it is mentioned that "in 1994, financial resources were allocated to 24 nationality periodicals". But mention is also made of the fact that in contracts concluded between the Ministry of Culture and legal subjects issuing periodicals, a clause will be added which allows the Ministry to stop a subsidy "when articles have an exclusively political character or cause tensions amongst citizens" (p 23). Furthermore, in the so-called "Draft of Measures" one of the aims mentioned is

"to provide support to minority culture and to support especially activities with a prevailing tolerance to the majority culture, with the final positive relation to our state" (p 27).

In my view the formulations quoted above could easily lead to arbitrary decisions which could greatly damage the interests of minority periodicals and minority cultural organisations. In a democratic State, there are constantly lively debates on a great number of issues, including cultural ones, and this can sometimes lead to certain tensions between protagonists and opponents of a specific view. Would a minority periodical have to abstain from participating in such debates out of fear of losing its State subsidy? How would it be decided whether a play written by a minority playwright and performed by a minority cultural organisation demonstrates "a prevailing tolerance to the majority culture"? I would recommend that these criteria be revised, and that steps will be taken to assure a greater transparency of the system of allocation of public funds, especially by not only making allocations public, but also the motives which have led to a positive or a negative decision. Finally, it would be important to ensure that persons who play a leading role in the cultural life of the minorities will be adequately represented in organs which decide on cultural subsidies.

These were the recommendations and suggestions I wanted to submit to you, Mr Minister. I am looking forward with great interest to your reply.

Yours sincerely,

[signature]
M. van der Stoel
OSCE High Commissioner
on National Minorities

**Minister of Foreign Affairs
of the Slovak Republic**

Bratislava, April 23, 1996
Ref.: 200.566/96-KAMI
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Your Excellency,

Permit me to respond to your comments and recommendations mentioned in your letter of 26 February, 1996. Your comments and recommendations made in connection with the adoption of the Act on the State Language of the Slovak Republic concern the area of language rights of persons belonging to national minorities and, particularly, their rights to use their respective languages in official communications; in addition to that, they concern that part of the basic treaty between the Slovak Republic and the Republic of Hungary which contains a reference to the Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of

Europe; the amendment to the Criminal Code; and, finally, you express your views on the Report on Regional and Nationality Culture published by the Ministry of Culture in 1995.

As you know, Your Excellency, the Act of the State Language of the Slovak Republic has been adopted in compliance with the Slovak Constitution. Under article 6, para. 1, of the Constitution of the Slovak Republic The Slovak Language is the official language of the Slovak Republic. The above law was passed by the prevailing majority of deputies in the National Council of the Slovak Republic, including opposition votes. Specifically, 108 out of 142 deputies present have expressed their support to the adoption of this law. This fact not only gives evidence of broad consensus reached on this issue, but also of the actively perceived need to also regulate, through legislation, this area in the everyday life of our society and State - an area which is not negligible in the least. As regards the connection between this law and the legitimate language rights of persons belonging to national minorities, allow me, Your Excellency, to draw your attention to the not entirely accurate quotation on your part of para. 4 in the Section 1 of the said law. Under this para., the usage of languages of national minorities and ethnic groups is arranged by separate laws ; that is, not will be dealt with as you state in your letter. This means that the language rights of persons belonging to national minorities in the Slovak Republic are guaranteed and arranged by at least 12 legal norms, including the Slovak Constitution, to the extent corresponding with The Slovak Republic s international commitments.

Please permit me to enumerate them. Legitimate language rights such as the right to receive education in a minority language, to use a minority language in official communications, to disseminate and receive information in the native language, to conduct procedure before the court in one s mother tongue, to have one s name and surname in the native language recognised and to use them, to give and use place-names in a minority language, etc., are guaranteed and dealt with by the following legislation: the Constitution of the Slovak Republic (article 6, para.2; article 34); Law 335/1991 on Courts and Judges (article 7, para.3); Code of Civil Procedure 70/1992 (article 18); Law 158/1992 on Penal Procedure before the Court (section 2, para.14); Law 38/1993 on the organisation of the Constitutional Court of the Slovak Republic, Proceedings before It and Status of Its Judges (article 23); Law 29/1984 on the System of Elementary and Secondary Schools (article 3, para.1); Act 81/1966 on Periodicals and other Mass Media in the wording of subsequent regulations; Law 270/1993 on the Slovak Radio (article 6, sub.d); Law 27/1/1993 on the Slovak Television (article 3, para. 3); Act 300/1993 on the Names and Surnames (article 2, 4); Act 154/1993 on the Registry (article 16); Law 191/1994 on the Names of Municipalities in the Languages of National Minorities; and others. None of the above items of legislation have been affected or abolished as a result of the adoption of the Act on the State Language of the Slovak Republic. The only exception is that of the Law 428/1990 on the Official Language which specified, in its article 6, the right to use a minority language in official communications, a right guaranteed by the Constitution.

Your Excellency, the items of legislation enumerated which govern the area of language rights of persons belonging to national minorities quite obviously indicate that it is only possible to speak of a legal vacuum in a very relative and particular sense, namely - as you correctly state - only in view of specifying the constitutional

right to use a minority language in official communications by means of a lower level legal norm. May I reassure you once again that, pursuant to article 6, para. 2, of the Slovak Constitution, preparatory activities have started for drafting a law which will deal with this issue in accordance with the legitimate language rights of persons belonging to national minorities such as these expressed in the relevant UN, Council of Europe and OSCE international documents. Members of national minorities, naturally, also participate in this work. An integral part of this process will also be the Slovak Republic's accession in the European Charter for Regional or Minority Languages which, understandably enough, will not substitute the drafting of the new law mentioned above. As regards to your concerns that the percentage necessary for the exercise of the right to use the minority language in official communications might be increased, I assume that it will not happen, particularly with respect to our traditions (this percentage was used in the former Czechoslovakia as early as before the World War II) and also because of the fact that the 20% limit has also been applied in the Law on the Names of Municipalities in the Languages of National Minorities.

Your Excellency, I am pleased to identify myself with your opinion that article 15, para.4, of the Treaty on Good Neighbourly Relations and Friendly Co-operation between the Slovak Republic and the Republic of Hungary which includes a reference to the Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, does not impose a legal obligation on Slovakia to recognise collective rights. Thus, it cannot be interpreted as imposing a legal obligation on Slovakia to introduce territorial autonomy on an ethnic basis. The discussion on this issue was not initiated by the Slovak side to whom it had been clear from the very start that the basic treaty between the Slovak Republic and the Republic of Hungary legitimized neither collective rights of minorities, nor the formation of territorial autonomous structures on an ethnic basis. In all seriousness, I confirm, yet again, that - and this is, after all, quite obvious from both the letter and the spirit of the treaty between Slovakia and Hungary - Slovakia has never accepted and will, naturally, never accept other philosophy for the protection of national minorities than the one which is enshrined in the fundamentals of the universal protection of individual and civil rights which has, by the way, been fully confirmed also in the final document of the Stability Pact in Europe. This is the way, not otherwise, how the Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe is to be understood. It has been included in the text of the treaty with a limiting supplementary clause, exclusively in the interest of successful completion of bilateral negotiations between the Slovak Republic and the Republic of Hungary, and also in the interest of the initiative on the part of the EU member states materialized through the Stability Pact in Europe. It has happened in good faith, in the hope that we are all jointly laying this new, fundamental component - and the bilateral treaty between Slovakia and Hungary undoubtedly is such a significance - as part of the foundations of European stability, security and prosperity, and in the hope that this document will become the source of undisturbed, friendly co-operation, rather than cause new disputes. It was in this spirit that the National Council of the Slovak Republic expressed its consent with the ratification of the Treaty on Good Neighbourly Relations and Friendly Co-operation between the Slovak Republic and the Republic of Hungary. In this connection, allow me, Your Excellency, to make a remark that - equally as in the case of voting on the Framework Convention for the Protection of National Minorities - the representatives of Hungarian Coalition in the National

Council of the Slovak Republic did not support the Basic Treaty between Slovakia and Hungary either.

On the same day, the Parliament passed an amendment to the Criminal Code in connection with which you have expressed certain concerns, namely as to potential liability to criminal prosecution for promoting the idea of territorial autonomy or, perhaps, various manifestations of disloyalty in the national minority or other periodicals. It is my firm conviction that your concerns are unfounded. Please allow me to provide you with a brief piece of information about the position of the Ministry of Justice on the issue. Before I focus on the amendment itself in connection with what has been said above, I should like to point out the fact that the amendment to the Criminal Code has not only been meant to cover the issue of the security of the State, but also the issue of protecting the Republic's economic interest, inter alia, also in connection with the privatisation process which is under way at present. With regard to the aspect which is of primary interest to you from the angle of your mission, it is possible to state that the Criminal Code included - even prior to its amendment - certain provisions which provided, directly or indirectly, protection to the constitutional order, territorial integrity and independence of the Slovak Republic. In comparison with some other countries, however, there were some blank spots still not covered by the Criminal Code which the amendment has now taken care of through its provisions in the article 92, article 92 sub. b, and article 98.

We do not presume that the amended Criminal Code would exceed the restrictions on the freedom of expression beyond those admitted by article 10, para. 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or that it would pose any risk to persons belonging to the Hungarian or other national minority. For the amendment, in compliance with the Slovak Constitution, does not rule out the right to have one's opinion, it does not rule out criticism of the government, its individual members and of the methods of governing, criticism of the president, parliament, political parties and movements either; it does not rule out the possibility of presenting other political positions and disseminating them in the mass media, also abroad, with the exception of promoting movements orientated towards suppression of citizens' rights and freedoms such as fascism, communism, the spreading of national, racial, class or religious hatred. In all the three articles, the amendment to the Criminal Code requires the independent court to prove the potential perpetrator such intention and such action the aim of which would be to disrupt the constitutional order of the Republic, its territorial integrity, defence capabilities, or to destroy its independence (article 92 sub. a, and article 92 sub. b) and damage the interests of the Republic by international dissemination of untrue information abroad (article 98).

The above facts lead to a very clear conclusion that a person belonging to the Hungarian or any other national minority who promotes and disseminates their demand for territorial autonomy cannot be subject to criminal prosecution. This, of course, holds true as long as the person concerned does not organize a public rally with the aim of disrupting the constitutional order of the Republic or its territorial integrity. Taken all in all, the guarantors of the lawful implementation of the provisions of the Criminal Code mentioned above are the Court of the Slovak Republic whose judges are, in pursuance of article 144, para. 1. And 2., of the Slovak Constitution independent in their rulings and are only bound by law and by the

international instruments to which the Slovak Republic has committed itself. In addition to that, the Slovak Republic as party to the International Covenant on Civil and Political Rights, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms, has recognized the right of its citizens to address the Committee for Human Rights, the European Commission for Human Rights, and the European Court for Human Rights on issues of potential violation of their human and civil rights.

Finally, just short comment on the Report on Regional and Nationality Culture . According to the information available to me, the principle by which, in contracts concluded between the Ministry of Culture and legal entities issuing periodicals, a clause will be added which allows the Ministry to stop a subsidy when articles have an exclusively political character or cause intolerance (you mistakenly use the term tensions in your letter) among citizens has not been applied in a single contract signed between the Ministry of Culture and the entities issuing national minority periodicals since the end of last year. Your suggestion concerning the assurance of a greater transparency of the system of allocation of public funds may become subject to consideration leading to the improvement of this system; however, with a clarifying remark that the information on the amounts of funds allocated as well as on the recipient periodicals and institutions is available to all of those interested.

Your Excellency, permit me at this point to thank you for your suggestions and recommendations which considerably contribute to the constructive nature of our dialogue.

Yours sincerely,

Juraj Schenk