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Mr Rudolf CHMEL

Deputy Prime Minister for Human Rights
and National Minorities
Slovakia

Strasbourg, 24 November 2011

Dear Deputy Prime Minister,

Following up to my visit to Slovakia from 26 to 27 September 2011, I should like to take this opportunity to continue the constructive dialogue I had with the Slovak authorities on the protection of the human rights of national minorities.

The recent strengthening of the powers of the post of Deputy Prime Minister for Human Rights and National Minorities is a welcome indication of the Slovak government's commitment to enhancing the protection of the human rights of national minorities. This commitment is also reflected in the adoption and the preparation by your government of a number of legislative and other measures. I understand that these include a long-term national minority policy, planned for adoption next year, as well as legislation on the legal status of national minorities and possibly on national minorities' culture. These developments are welcome, and I encourage the Slovak authorities to continue on this pro-active track.

In this letter I should like to focus on a specific issue: the protection and promotion of language diversity in Slovakia. With more than ten national minorities making up approximately 10% of the country's population, the need to reconcile the language rights of national minorities with the promotion of the state language is an important human rights issue. Language is an essential tool for social organisation and the very functioning of the state. However, it also constitutes a central dimension of an individual's identity and tends to be especially important for those in a minority position. Therefore it is crucial that the appropriate balance between the protection and promotion of national minority languages and the promotion of the state language is achieved. This is a principle which derives from European human rights treaties, such as the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages. Failure to achieve this balance can be a source of tensions between different communities.

In this respect, I noted with concern that the adoption in June 2009 of amendments to the 1995 State Language Law, which strengthened the use of Slovak as the state language, was followed by tensions in Slovakia opposing in particular the Slovak majority population and Hungarians, who - with an estimated population of 500 000 or 9.7% of the total population - constitute Slovakia's largest national minority. Parts of the 2009 amendments raised issues of compatibility with international standards and with the constitutional principles of Slovakia. The adoption in December 2009 by the Slovak government of the Implementation Principles was a positive step. The aim of these Principles was to clarify certain points of the above legislative amendments and to unify interpretation of the State Language Law. While the aim of the 2009 legislative amendments, as complemented by the Principles, was a legitimate one – to protect and promote the state language – the question arose whether the appropriate balance had been achieved.

I noted that the 2009 amendments to the State Language Law have been subject to extensive international attention, including by the Advisory Committee on the Framework Convention for the Protection of National Minorities. In its 2010 Opinion on Slovakia, the Advisory Committee raised concerns that the mere legal possibility of imposing fines, whether on legal persons or self-employed persons, in relation to the use of minority languages is not compatible with the human rights standards relating to the protection of the language rights of national minorities. Furthermore, while the Principles mentioned above provided some clarification and guidance for the interpretation of the State language law, the Advisory Committee was concerned that they are not legally binding. Their status in the Slovak legal system raises questions with regards to the requirements of foreseeability, legal certainty and enforceability. The Advisory Committee called on the Slovak authorities to take adequate legislative steps to adopt more comprehensive legislation on minority languages in order to ensure an appropriate

balance between the promotion of the state language and the minority members' right to use their own language. It also called on the authorities to favour a policy of incentives over a punitive approach in relation to the implementation of the State Language Law, both in the public and private spheres.

Also in 2010, the Venice Commission published its Opinion on the State Language Law, upon the request of your government. The Venice Commission stated that the protection and promotion of the state language is a legitimate concern. However, this must be balanced against the protection and promotion of linguistic rights of persons belonging to national minorities. It found some provisions of the 2009 legislative amendments to be incompatible with the obligation which the Slovak authorities have undertaken under the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the International Covenant on Civil and Political Rights. These provisions are related to: the obligation to use the state language in official communication in areas where the minority population does not reach the threshold of 20%; the requirement for private persons to use the official language in contacts with the authorities; the obligation to use the state language in judicial proceedings, administrative proceedings and proceedings before law-enforcement authorities if one has sufficient command of it; and the non-recognition of contracts drafted in minority languages.

The Venice Commission further emphasised that, for the sake of legal certainty, the relationship of the State Language Law with the 1999 Law on the Use of Minority Languages, which protects the language rights of national minorities, as well as the legal status of the above-mentioned 2009 Implementation Principles should be clarified. It was of the opinion that the main provisions of the Principles, and certainly those that affect or amend the 2009 State Language Law, should be adopted by parliament and introduced in this law. Finally, the Venice Commission drew the Slovak authorities' attention to certain provisions of the 2009 amendments related to the promotion and protection of the state language, which should be carefully examined and possibly revised so as to avoid a disproportionate impact.

I have noted that in February 2011 the Slovak Parliament adopted a set of new amendments to the State Language Law. Furthermore, in May 2011 amendments to the 1999 Law on the Use of Minority Languages were also adopted by the Parliament.

With regard to the 2011 amendments to the State Language Law, it is with regret that I noted that only one of the four main recommendations of the Venice Commission was addressed and only in part: the one relating to the recognition of contracts drafted in minority languages. It would be advisable to review the regulations on the use of languages in a way which would fully address all recommendations made by the Venice Commission. In this process the authorities should pay particular attention to the problem of overlapping of minority-related provisions in different pieces of legislation, as this could create legal uncertainty and might lead to different interpretations which could be detrimental to the enjoyment of the human rights of national minorities.

Lastly, I have noted that fines have been retained in the State Language Law, though only for exceptional cases related to threats to life, health, safety or property. Furthermore, the May 2011 amendments to the 1999 Law on the Use of Minority Languages mentioned above have introduced fines for the violations of certain provisions of this law committed by administrative bodies, private companies and individuals. I believe that the Slovak authorities should favour a policy of incentives over a punitive approach. The Venice Commission emphasised that the aims that the authorities wish to pursue by introducing fines would be more efficiently reached through co-operation and confidence-building measures, rather than through sanctions. I agree with this approach, and I recommend that the Slovak authorities consider abolishing the punitive provisions in both the State Language Law and the Law on the Use of Minority Languages.

Looking forward to your reply and to continuing a constructive dialogue with you and the Slovak government, I remain,

Yours sincerely,



Thomas Hammarberg