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Mr Peter ŽIGA

Deputy Speaker of the National Council of the Slovak Republic

Mr Miroslav ČELLÁR

Chair of the Constitutional Law Committee

Mr Michal ŠIPOŠ

Chair of the Public Law and Regional Development Committee

Ms Lucia PLAVÁKOVÁ

Chair of the Human Rights and National Minorities Committee

Mr Roman MICHELKO

Chair of the Culture and Media Committee

Strasbourg, 7 May 2024

Dear Deputy Speaker, dear Committee Chairpersons,

My mandate is to foster the effective observance of human rights in all 46 member states of the Council of Europe. An important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in addressing possible shortcomings in their laws and practices. In this context, I am writing to you about two bills currently before the National Council, namely on the registration of non-profit organisations, and on the public service broadcaster.

Registration of non-profit organisations and labelling of foreign funding

A bill amending Act No. 213/1997 Coll. on non-profit organisations providing services of general benefit, as amended, and amending and supplementing certain acts (print no. 245) is currently awaiting a second reading before the National Council. According to its explanatory memorandum, the bill aims to increase transparency of funding, allow better control of funding flows, enhance responsible management of funding, and promote public trust in non-profit organisations.

The bill imposes a new requirement on associations and organisations with an international dimension that have an income of more than EUR 50,000 per year to submit an annual report. Such a report should list the details of each natural person or legal person making a gift or providing funding in excess of EUR 5,000 per year. The Ministry of Interior can impose a fine of up to EUR 1,000 on such organisations for failure to deposit an annual report. It can also decide, without any judicial process, to dissolve such organisations. Similarly, the dissolution of such organisations without any judicial process can be the result of the Ministry finding deficiencies in the annual report and a subsequent failure to correct these deficiencies.

Additionally, the bill requires any non-profit organisation receiving EUR 5,000 or more from a foreign natural or legal person on an annual basis to be registered by the Registry Office as an “organisation with foreign support”. Furthermore, an organisation designated as such would be required to immediately begin indicating their name with the addition “organisation with foreign support”. This must be done, in a legible way, in relation to all operations in the course of its activity. In case of non-compliance, a fine of up to EUR 5,000 can be imposed on the organisation, and it could risk dissolution.

Council of Europe member states should foster a safe and enabling environment for civil society, in line with the Committee of Ministers’ Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe. Furthermore, under Article 11(2) of the European Convention on Human Rights (ECHR), any restriction of freedom of association should be

prescribed by law. It should also be necessary in a democratic society, meaning it must correspond to a “pressing social need” and be proportionate to the legitimate aim pursued. The objective of increasing transparency with regard to the funding of civil society organisations may in principle correspond to the legitimate aim of the prevention of disorder, listed in Article 11(2) of the ECHR and as noted by the European Court of Human Rights (the Court), for example in *Ecodefence and others v. Russia*. It should not, however, be sought through disproportionate means, and to the detriment of the effective enjoyment of human rights and freedoms. In particular, according to the OSCE-ODIHR and Venice Commission Guidelines on Freedom of Association, “(e)nsuring that an interference by the state in the exercise of a fundamental freedom does not exceed the boundaries of necessity in a democratic society requires striking a reasonable balance between all countervailing interests and ensuring that the means chosen be the least restrictive means for serving those interests. At the legislative stage, this should be done by assessing whether a planned interference in the exercise of the right to freedom of association is justified in a democratic society, and whether it is the least intrusive of all possible means that could have been adopted.”

I am concerned about the human rights compatibility of the bill’s sanctions, which can be directed at associations or organisations with an international dimension in case of non-compliance with annual reporting requirements or deficiencies in submitted annual reports. The bill only makes a broad reference to such deficiencies, which are up to the Ministry of Interior to assert. This calls into question whether this aspect of the bill is sufficiently accessible and foreseeable to meet the requirement of an interference with Article 11 ECHR being “prescribed by law” within the meaning of the Court’s case law. The measures that the Ministry of Interior can take are also far reaching and can include dissolution of an organisation without any judicial process. The above-mentioned Guidelines on Freedom of Association make clear that the involuntary termination or dissolution of a non-governmental organisation should only occur following a decision by an independent and impartial court. The Council of Europe Committee of Ministers’ Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations also highlights that such a dissolution should only apply in cases of bankruptcy, prolonged inactivity or serious misconduct. The bill’s provisions clearly do not limit themselves to these situations. As such, these provisions appear to lack appropriate procedural safeguards and to fail to sufficiently meet the requirements of necessity and proportionality.

As regards the registration and labelling of non-profit organisations in relation to foreign funding, I note the following. The above-mentioned Recommendation Rec(2007)14 provides that “NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties”. Furthermore, the Court has stressed in the case of *Ecodefence and others v. Russia* that “in order to ensure that NGOs are able to perform their role as the ‘watchdogs of society’, they should be free to solicit and receive funding from a variety of sources. The diversity of these sources may enhance the independence of the recipients of such funding in a democratic society”. It also found that labelling organisations receiving funds from foreign entities (in that case, as “foreign agents”) was unjustified and prejudicial, as well as being liable to have a strong deterrent and stigmatising effect on their operations. The Court found that the cumulative effect of measures – whether by design or effect – was a legal regime that placed a significant chilling effect on the choice to seek or accept foreign funding. It did not consider this necessary in a democratic society. I am concerned that the current bill also unduly interferes with the independence of funding of non-profit organisations and that the requirement to be registered and publicly present themselves as an “organisation with foreign support” will likewise create such a chilling effect in the Slovak Republic.

I further note that the proposed bill contains many elements similar to legislation that the Court of Justice of the European Union (CJEU) has found to be incompatible with EU law, including on the ground of unjustified interferences with the right to freedom of association and other rights protected under the EU Charter of Fundamental Rights (see *Commission v. Hungary*, Case C-78/18). In fact, in many ways, the bill is even more restrictive than the law that was assessed by the CJEU. For example, it applies a much lower financial threshold for registration and labelling requirements, and allows dissolution of certain organisations to be decided directly by the Ministry of Interior.

In view of the above considerations, I respectfully ask members of the National Council to refrain from adopting the bill on non-profit organisations as tabled.

Changes to the public service broadcaster

I note that a bill on Slovak Television and Radio and amending certain other laws (print no. 278) was recently sent to the National Council for its consideration. The bill, if adopted, would result in the current public service broadcaster RTVS being replaced by a new entity, Slovak Television and Radio (STVR). I understand that this means that the mandates of organs of RTVS, including the Director General, would come to an end before the moment foreseen under current law. The bill also provides that the governing Council of the new entity would be comprised of nine members, four of whom would be directly appointed and dismissed by the Minister of Culture. This is in contrast to the current law, under which all members of the RTVS Council are elected by the parliament.

I appreciate that the bill is different from a previous government proposal that was criticised by various actors, including for its possible incompatibility with human rights standards and the EU Media Freedom Act. However, I also note that many media freedom organisations continue to express concern that the bill in its current form would have the effect of enhancing government control over the operation and editorial policies of the public service broadcaster in the Slovak Republic.

In this respect, it is to be recalled that the Council of Europe Committee of Ministers Recommendation CM/Rec(2012)1 on public service media governance has reiterated that freedom of expression, and free and pluralist media, are indispensable to genuine democracy. It highlights that media are the most important tool for freedom of expression in the public sphere, enabling people to exercise the right to seek and receive information. In its Guiding Principles for public service media governance (appended to the above-mentioned Recommendation), the Committee of Ministers furthermore makes clear that “[t]he first priority for public service media must be to ensure that their culture, policies, processes and programming reflect and ensure editorial and operational independence.” In addition, the Court has found that, for the protection of freedom of expression under Article 10 ECHR, states that have public service broadcasters must ensure that such broadcasters are supported by legislative and administrative frameworks that ensure their independence from government control. If measures lead to the public broadcaster disproportionately favouring governmental perspectives, this may furthermore result in a violation of freedom of expression (see *Manole and others v. Moldova*).

In view of the above-mentioned standards, I respectfully ask the members of the National Council to give close consideration to concerns that elements of the bill may undermine safeguards for the operational or editorial independence of the public service broadcaster. This would include consideration of the bill’s provisions as regards the premature ending of the mandates of the current Director General and other organs, as well as the system in which several members of the new Council are directly appointed by the government.

I would be grateful if you could ensure that all members of the National Council, and of your respective Committees, receive a copy of this letter. I stand ready to continue our constructive dialogue on this and other human rights issues in the Slovak Republic.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Flaherty". The signature is fluid and cursive, with a large initial 'M' and 'O'.

Michael O'Flaherty