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**Mr Miroslav KOLLÁR**

Speaker of the National Council of the Slovak Republic

**Mr Milan VETRÁK**

Chairperson of the Constitutional and Legal Affairs Committee

**Mr Jozef LUKÁČ**

Chairperson of the Public Administration and Regional Development Committee

Strasbourg, 19 April 2023

Dear Speaker, dear Chairpersons, dear Members of the National Council,

As Council of Europe Commissioner for Human Rights, my mandate is to foster 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 member states' governments and parliaments, and to assist them in addressing possible shortcomings in implementing human rights obligations in their laws and practices. On this occasion, I would like to address the need for ensuring the equal enjoyment of human rights by LGBTI people in the Slovak Republic.

I would have hoped that the horrific attack of 12 October 2022 on the Tepláreň bar, which resulted in the deaths of Juraj Vankulič and Matúš Horváth, would have triggered a process of addressing long-standing concerns about intolerance towards LGBTI people, including by taking urgent steps to ensure that they can enjoy the same rights as anyone else in society, in line with the Slovak Republic's international human rights obligations. Slightly more than six months after the attack, however, I am disappointed that no discernible progress has been made, and that the human rights of LGBTI people in the Slovak Republic appear to be more, rather than less, at risk.

I am concerned that proposals have continued to be made by members of the National Council for legislation that would lead to human rights regression. Of immediate concern is the proposal for a law supplementing Act No. 301/1995 Coll. on birth registration numbers (print no. 1486), which will be subject to a second reading in May. The proposal would allow a change of the gender marker in a person's birth number only if they can prove, on the basis of a "genetic test", that their gender was "incorrectly determined". This would effectively deprive transgender (trans) people of the opportunity to have their gender identity legally recognised. I recall that the European Court of Human Rights has found in multiple judgments that the protection of trans persons' right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR) includes a positive obligation on states to provide for quick, transparent and accessible procedures established in law and enabling legal gender recognition (see [L. v. Lithuania](#) (2007); [X v. "the former Yugoslav Republic of Macedonia"](#) (2019); [Y.T. v. Bulgaria](#) (2020)). I therefore call on the National Council to reject this proposal, which would put the Slovak Republic in conflict with its obligations under the ECHR.

I also call on members of the National Council to ensure that current legal gender recognition procedures and practices are fully human rights compliant. In this respect, I note that the Ministry of Health recently issued guidance to clarify that proof of the termination of a person's reproductive process (sterilisation) cannot be a legitimate condition for legal gender recognition. This is very important, as such conditions have been clearly found by the European Court of Human Rights to be in violation of Article 8 ECHR (see [A. P., Garçon and Nicot v. France](#) (2017), for example), as well as the [right to health](#) under the European Social Charter. However, I am concerned that this step might be rolled back, and that a practice that deeply impacts a person's bodily integrity, dignity and right to private and family life might be reintroduced, in violation of international obligations. I therefore urge members of the National Council to ensure that conditions for legal gender recognition that violate human rights are not reintroduced. Legal gender recognition procedures should duly take into account that the World

Health Organisation removed being transgender from the [list of mental illnesses](#) in 2019. They should also align with international human rights best practice, including by being based on self-determination, as recommended by the [Parliamentary Assembly of the Council of Europe](#) (PACE) and myself, among others.

Another area where laws and practices continue to fall short of the European Court of Human Rights' [case-law](#) is in relation to the rights of same-sex couples. Recently, the Court's Grand Chamber clarified that Council of Europe member states are "required to provide a legal framework allowing same-sex couples to be granted adequate recognition and protection of their relationship" ([Fedotova and Others v. Russia](#), 2023). The current legal framework in the Slovak Republic does not provide for such recognition and protection. The recently reported plan by the government to introduce a new possibility of appointing another person, including a partner, as a legal 'confidant', in my view, also does not ensure appropriate legal recognition of a same-sex couple's relationship in line with ECHR obligations.

Additionally, I urge members to support further steps to ensure that the human rights of LGBTI people are adequately protected. These include ensuring that gender identity and sex characteristics are explicitly recognised as protected characteristics in hate crime legislation, and included as aggravating circumstances when offences are committed on those grounds. Awareness-raising throughout society is also important to ensure understanding and acceptance of diversity in relation to sexual orientation and gender identity. This requires, among other steps, the mainstreaming of comprehensive, accurate, scientifically sound and culturally sensitive sexuality education, based on existing [international standards](#). Civil society working on LGBTI issues must also be adequately supported, including in providing safe spaces for LGBTI people. Moreover, member states have a clear obligation to provide an enabling environment for human rights defenders, which necessitates promptly addressing threats to the safety of organisations working on issues relating to the human rights of LGBTI persons. I also note that the European Commission against Racism and Intolerance (ECRI) recently [found](#) that its key recommendation to the Slovak Republic to adopt a comprehensive action plan on preventing and combating intolerance and discrimination against LGBTI people had still not been implemented.

Finally, I want to address the role of members of the National Council in shaping the public discourse on LGBTI issues. I am concerned that members have sought to downplay the link between hate crimes, including the attack on Tepláreň, and wider societal and political developments. PACE particularly [highlights](#) the importance of recognising hate incidents not only as expressions of individual prejudice, but as "the result of sustained and often well-organised attacks on the human rights of LGBTI people". PACE also identifies the deliberate mischaracterisation of the struggle for the equality of LGBTI people as 'gender ideology' or 'LGBTI ideology' as particularly problematic. I therefore call on all members of the National Council to refrain from promoting such narratives, which are counterproductive to effectively addressing intolerance and hate crimes against LGBTI people.

I also recall that [Recommendation CM/Rec\(2022\)16](#) of the Committee of Ministers of the Council of Europe on combating hate speech notes that persons in leadership positions should, given their position of influence, avoid engaging in, endorsing or disseminating hate speech, and that they should rather promote a culture of human rights. Nevertheless, ECRI recently [expressed concern](#) that, in the Slovak Republic, "parliamentary sessions during which bills or legislative proposals dealing with LGBTI-related issues are debated ... serve as platforms for political LGBTI-phobic hate speech." It should go without saying that there can be no space for hate speech in national parliaments, and that parliamentarians must clearly speak out whenever their peers engage in hate speech.

As legislators and elected representatives, members of the National Council are key guarantors of human rights and should promote the observance of the Slovak Republic's obligations. I therefore urge all members to ensure this role is fulfilled in such a way that the safety, dignity and equality of everyone in the Slovak Republic is assured, regardless of their sexual orientation or gender identity. I would appreciate if you could ensure that this letter is shared with all members of your Committees, and the National Council as a whole.

Your sincerely,



Dunja Mijatović