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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPLIES
TO THE QUESTIONS OF THE VENICE COMMISSION
prepared at the Ministry of Culture of the Slovak Republic
(24 March 2010)

ON THE ACT OF THE NATIONAL COUNCIL NO. 270/1995 COLL.
ON THE STATE LANGUAGE
OF THE SLOVAK REPUBLIC

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1. *To what natural persons can sanctions according to § 9a be imposed? It seems that they can not be imposed to individual officials, but only to public organisations and they cannot be applied to citizens (cf Article 15 of the Principles of government); although both categories of individuals are – in certain situations-relations - obliged to use the Slovak language (§ 3(5); § 6-8). Is that correct? Is the office/organization/public legal person nevertheless allowed to sanction the non-use of the Slovak language in that situations by means of its disciplinary power in as far as civil servants/military persons/medical personnel is concerned?*

A fine may only be imposed under section 9a of the State Language Act on natural persons who are self-employed. A fine cannot be imposed under section 9a of the State Language Act on natural persons who are not self-employed. Some provisions of the State Language Act lay down duties that also apply to natural persons who are not self-employed but these natural persons cannot be fined. The relevant provisions are section 3(5) and section 3(2). It may happen that a physical person who is not self-employed will display a notice intended to inform the public referred to in section 8(6). In this case section 8(6) applies to the notice but cannot be enforced by a fine. The State Language Act does not address the question of disciplinary powers of offices, organisations and public legal entities in relation to state employees, members of the armed forces and medical staff.

2. *What does the phrase “Unless this Act provides otherwise” in § 1(4) mean? This section refers for instance to the Law on national minorities languages act; is that act a *lex specialis*, which cannot be put aside by the State Language Act (SLA) unless the SLA specifically says so? In what instances is the National minority languages act put aside by the SLA (to what extent does the Act restrict the minority’s rights under the National minority languages act)? The same question, but now as to the Education acts: to what extent are they put aside by the SLA?*

The phrase “unless this Act provides otherwise” in section 1(4) of the State Language Act indicates that besides the separate laws regulating the use of the languages of minorities there are also regulations on the use of these languages in the State Language Act. In cases where a conflict of regulations would lead to a reduction in the language rights of the minority laid down by other laws, the State Language Act respects and maintains these rights with express reference to the relevant laws. Such references are given in section 3(1) (which covers section 3 as a whole), section 3(5) specifically (although the relevant act is not expressly cited in the footnote, the phrase “unless ... separate regulations ... provide otherwise” carries the meaning regardless of what is written in the footnote, which serves only to provide information and, in the given case, a list of examples), section 3a, section 4(1), section 4(3), section 4(4), section 4(5), section 5(4) and section 7(2). The Act on the use of languages of national minorities is therefore *lex specialis* because it is specifically recognised by the State Language Act (see the penultimate paragraph in article 2 of the government principles). The Act on the use of the languages of national minorities is limited by the State Language Act only as regards internal service communication in the armed forces, the Police Corps, the Slovak Information Service, the Prison and Justice Guards Corps, the Railway Police, the Fire and Rescue Corps and municipal police corps pursuant to section 6(1) of the State Language Act. Specifically, section 2(1) of the Act on the use of the language of national minorities allows citizens in municipalities where at least 20% of citizens belong to a national minority to use the language of the national minority in official communication. This provision would allow internal service communication in the services listed above to be conducted in the language of the national minority, which would conflict with the need to have a single command and communication language for internal communications. A similar provision can be found in the exemplary Italian law of 15 December 1999 *Provisions for the protection of traditional linguistic minorities* no. 482 published in the *Gazzetta Ufficiale* no. 297 of 20 December 1999, article 9(1) of which states: “Article 9.1 Without prejudice to the cases listed in article 7 and the general provisions of article 3, it is permitted in government offices to use the spoken and written language in which an investigation is conducted. The application of this paragraph is prohibited in the case of the **armed forces and the state police force.**” The OSCE high commissioner has also concluded

that the solution adopted in Slovakia's State Language Act is in accordance with international standards and practice.

As to the Education Act, there is no provision that the State Language Act conflicts with because the whole of section 4 of the State Language Act refers to individual provisions of the Education Act.

3. *What does 'official communication' (§ 3) mean; and is there a difference with 'service communication' (§ 6 (1))? And with 'public communication' (§ 8)? As we have been told, two military or police persons are free to communicate with each other in the Hungarian language during working time – as long as no third party is involved. How can that be combined with § 6 (1)?*

Official communication is defined in article 3(a) of the government principles. It is a synonym of the term "service communication", which is used only in section 6(1) of the State Language Act to distinguish "internal" service communication in the armed forces and corps from any official communication, whether internal or external, as defined in section 3 of the State Language Act. The term public communication is not of normative significance; it is used only in the titles of section 5 and section 8 to refer to the social relations regulated by section 5 and 8 of the State Language Act. Two soldiers or police officers may freely speak in Hungarian together during active service provided that they are not engaged in service communication. Conversations between friends and discussion of private matters are not restricted by the State Language Act. The involvement of a third party is irrelevant to section 6(1). It applies only to section 3 of the State Language Act. The solution whereby the state language should be used when a third party who does not understand the language of the national minority in three-way official communication between an official (who speaks the language of the national minority), a first client (who speaks the language of the national minority) and a second client (who does not speak the language of the national minority) was proposed by the OSCE high commissioner for national minorities. The Slovak party is aware that it is establishing a precedent but even the exemplary Italian minority law does not address, in article 9, the above situation, which could arise in official communication. Naturally it may happen that the first client cannot speak the state language but in this case an interpreter will be provided in accordance with the government principles.

4. *To what extent does the Act apply to existing monuments (article 5(7))?*

Existing memorials, monuments and memorial plaques are governed by section 11a of the State Language Act as interpreted by the second and third sentences of article 13 of the Government Principles. The time coverage is limited to the period from 1 January 1996 when the Act of the National Council of the Slovak Republic on the state language no. 270/1996 Z.z. came into effect, which is to say that memorials, monuments and memorial plaques erected before 1 January 1996 will not be assessed at all. Material scope: if the inscription in the minority language is in first place but is equal in size or smaller than the inscription in the state language there will be no obligation to modify the text in the state language to establish conformity with the State Language Act. If the text in the state language is in second place but is smaller than the text in the language of the national minority, the deciding criteria will be visibility and distinguishability. If there is no text in the state language at all, it will have to be added to the existing text in another language.

5. *What is the reasoning behind the favoured position of the Czech language (article 3)?*

The reason for the favoured position of the Czech language is that it meets the criterion of basic comprehensibility in relation to the state language. If any other language met this criterion the Czech language would not be uniquely favoured. Theoretically the Czech language is just one of many such comprehensible languages. In his opinion of the State Language Act of the

Slovak Republic, the OSCE high commissioner stated that the given criterion could be adopted as a reference point for similar situations in other OSCE countries.

6. *What is the legal status of the so-called "Government principles": they are contained in a government decree; why not in a government regulation? They were approved by a resolution, what does that mean? Do these principles only have internal relevance, or can they also be applied by the judge/court, at least when these principles contain an interpretation of the SLA which is favourable to the defendant/individual (for instance the article 2 sub ab) concerning 'gravestones' etc.?*

The Government Principles are an internal normative act (a management act, internal regulation) which is only binding within the public administration in relation towards subordinate subjects. Senior subjects apply them in managing the activity of subordinate subjects and respect for them results from the principle of subordination. The internal normative act nevertheless also has real external effects on non-subordinate subjects (it covers, for example, the interpretation of legal norms, which is binding for subordinate bodies in deciding on the rights and duties of natural persons and legal entities). An internal normative act must be in accordance with the constitution, the law and other generally binding legal regulations. The Government Principles are binding methodological orders that unify the interpretation of the provisions of the State Language Act. The Ministry of Culture, other ministries and the other central state administration bodies are obliged to apply the State Language Act in accordance with the approved Government Principles. Nevertheless, the Government Principles cannot be considered a generally binding legal regulation (nor can the resolution by which the Government Principles were approved) The Government Principles are not a source of law (they do not contain legal norms) and they are not implementing regulations of the law. The Principles of the government of the Slovak Republic on Act of the National Council of the Slovak Republic No. 270/1995 Z.z. on the state language of the Slovak Republic, as amended, was approved by Resolution of the government of the Slovak Republic of 16 December 2009 no. 933. The Government Principles were published under no. 593/2009 Z.z. Publication in the Collection of Laws (*Zbierka zákonov SR*), ensures that they are universally accessible. The competence of the government of the Slovak Republic to issue such principles is based on

- a) Article 119 of the Constitution of the Slovak Republic, in particular letter i) thereof, which states that the government shall decide on crucial issues in domestic and international policy and
- b) section 39(1) of Act No. 575/2001 Z.z. on the organisation of activities of the government and central state administration organisations, as amended, under which the government of the Slovak Republic directs, coordinates and controls the activity of ministries and the other central state administration bodies.

The competence of the government to publish government principles in the official journal is based on section 1(2)(c) of Act of the National Council of the Slovak Republic No. 1/1993 Z.z. on the Collection of Laws of the Slovak Republic which states that government resolutions shall be published in the Collection of Laws if the government decides that they should be so published.

A government regulation has the character of an implementing regulation. The Government Principles are an interpretative act. Government regulations cannot interpret the law. A government regulation specifies aspects of the application of individual provisions of a law such as the particulars of applications, required annexes and so on, within the limits defined by the law.

The fact that the Government Principles were approved by a government resolution means that they are binding for ministries and the other central state administration bodies, unless the Government Principles specify the individual central state administration body.

Courts are not obliged to apply the government principles and the government cannot request that they do so because that would be a breach of the separation of powers (for this reason the Government Principles do not even suggest how courts should proceed in interpreting the provisions of the State Language Act which is a matter for judges, the judiciary is not involved in the imposition of fines). On the other hand, it is quite certain that a citizen who believes that the Ministry of Culture did not abide by Government Principles in imposing a fine will be able to present the Government Principles as evidence and trust the court to assess the submitted evidence.

That “gravestones” are not memorials, monuments or memorial plaques must be immediately clear to any judge because there is existing case law determining that monuments are freestanding structures for public use that require a building permit while “gravestones” do not have a public character and do not require a building permit. Furthermore, the relevant legislation of the Slovak Republic consistently distinguishes “gravestones” from memorials, monuments and memorial plaques, for which Slovak legislation uses different terms.

7. *Would it be possible/attractive/acceptable to strip the State Language Act down to only those elements which are relevant to protect Slovaks in those regions where they are in fact a minority? Which would mean that only obligations of public authorities are preserved?*

Protection of the state language is a legitimate aim in any part of the state’s territory. There is no reason to limit it to territories in which the population speaking the state language are in the minority. As part of its sovereignty the state is obliged to ensure that its citizens are able to receive and provide information in the state language in any part of the its territory. A state language is a symbol of sovereignty equal to the state territory, the state flag and the system of state bodies (ECHR: Bulgakov c. Ukraine, 11. 9. 2007; Mentzen c. Latvia, 7. 12. 2004; Kuharec, 7.12.2004). The existence of a state language established by the constitution therefore guarantees citizens speaking the state language the subjective right to receive and provide information in the state language. Not only public authorities must have the obligation to guarantee this right to citizens speaking the state language but also natural persons and legal entities. It is enough to study the finding of the Hungarian constitutional court of 19 January 2009 on the constitutional validity of the compulsory use of the Hungarian language in commercial advertising, where the Hungarian constitutional court reached the conclusion that allowing foreign language text alongside Hungarian text meant that the obligation to publish a text also in Hungarian had no effect on freedom of expression as guaranteed by article 61 of the Hungarian constitution. To be fair, it must be added that the Hungarian law on the language of advertising and notices does not apply to municipalities in which a minority self-government exists. The practical application of the Hungarian constitution shows that protection of the state language is even stronger than freedom of expression because that is guaranteed by the opportunity for parallel use of a foreign language. In our opinion this decision of the Hungarian constitutional court exceeds the interpretation of freedom of expression laid down in the case of Ballantyne vs. Canada before the UN Human Rights Committee in 1993, when the language of advertising was clearly defined as the sphere of freedom of expression though the state was allowed to set a compulsory language for advertising.

8. *How are the relations with the public in the health service affected by the SLA?*

The relationship between clients/patients and the staff of medical facilities is governed by the second and third sentence of section 8(4) of the State Language Act and a more detailed interpretation is given in article 11 of the Government Principles. Such communication is not subject to any supervision by the Ministry of Culture and as a result neither medical facilities, their staff or their clients can be subject to penalties. The use of the word “usually” means that it is possible to deviate from the use of the state language even in cases where the client

understands the state language and is not a citizen belonging to a national minority in the territory of a municipality in which at least 20% of the population are members of the national minority. Article 11 of the Government Principles identifies cases in which this may be suitable. The fourth sentence of section 8(4) lays down a ban on forcing staff to speak the language of a minority. If it is necessary to use the language of a minority for communication with a client and a member of staff who has a command of the language of the minority refuses to speak the language of the minority, this cannot constitute grounds for punishment. In such a case it would be necessary to arrange for another member of staff able to speak the language of the minority or an interpreter to be present.

9. *Can you provide the legislation concerning the names of the towns, villages and other geographical places.*

The issue of the formulation, approval and use of geographical names is divided according to whether the name applies to an inhabited geographical object (the name of municipalities, the names of towns and their parts, the names of streets and public areas) or to an uninhabited geographical object (the names of uplands, valleys, lowlands, caves, expanses of water, water courses, geographical features in the vicinity of towns and villages etc.).

The names of inhabited geographical objects are regulated by Act of the Slovak National Council no. 369/1990 Zb. on municipal government, as amended, in sections 1a and 2b (see annex 1). The names of uninhabited geographical objects are regulated by Act No. 215/1995 Z.z. on geodesy and cartography, as amended, in section 18 (see annex 2).

The denomination of geographical objects in the languages of national minorities in municipalities where at least 20% of the population are members of a national minority is permitted in accordance with Act no. 184/1999 Z.z. on the use of the languages of national minorities and Act of the National Council of the Slovak Republic no. 191/1994 Z.z. on the denomination of municipalities in the language of national minorities (see annex 3). Section 13 of act no. 245/2008 Z.z. on upbringing and education (the Schools Act) and on the amendment of certain acts, included permission for the use of forms of geographical names in a minority language in textbooks and teaching books if the form is common and established in the languages of national minorities (see annex 4).

Act of the Slovak National Council No. 369/1990 Zb. on municipal government, as amended

§ 1a

The name of the municipality

(1) Municipalities and their parts have their own names. The name of each municipality and parts thereof shall be in the state language.^{1b)} Denomination of municipalities in any other language shall be governed by a separate act.^{1c)}

(2) The name of a municipality shall be set or changed by the government of the Slovak Republic (the government) by regulation: the name of a municipality may be changed only with the consent of the municipality. The names of parts of municipalities shall be set and changed by the Ministry of Interior of the Slovak Republic (the ministry) at the proposal of the municipality.

(3) The name of a new municipality and its parts shall usually be based on the name of a part of the municipality, the name of a local part, the name applied to a major natural feature, phenomenon or historic event associated with the territory of the municipality or an important deceased personality.

(4) A municipality established by the merger of municipalities shall usually have the name of one of the merged municipalities. If the merged municipalities does not specify the name of the new municipality in the agreement on the merging of the municipalities because no agreement was reached on the name, the ministry shall propose the name. In exceptional cases a combined name for the municipality may be set.

(5) A municipality that is created by the division of a municipality shall usually have the name that it had as a part of the divided municipality. If a new municipality was not created from a former part of a municipality, the name shall be determined in accordance with paragraph 3.

(6) It is prohibited for a municipality or part of a municipality to have a name that is long, that duplicates another name, that offends moral, religious or national feeling or that is inconsistent with historical development of the territory.

(7) If the name of a municipality or part thereof is to be changed in relation to a change in the territory of the municipality, both changes must take place at the same time.

§ 2b

Denomination of streets and other public spaces

(1) The municipality shall set and change the names of streets and other public areas.

(2) In a municipality that has a number of streets or other public areas, every street and public area shall have its own name.

(3) The naming of streets and other public spaces shall reflect the history of the municipality, important deceased personalities, objects and so on. It is prohibited to use the names of living persons, names that are long, that duplicate other names, that offend moral, religious or national feeling and names that are inconsistent with the history of the municipality.

(4) The denomination of streets and other public areas in the language of a national minority is governed by a separate act.^{2b)}

(5) The municipality shall provide for the denomination of streets and other public areas at its own expense.

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1b) Section 3(3)(d) of Act of the National Council of the Slovak Republic No. 270/1995 Z.z. on the state language of the Slovak Republic.

1c) Act of the National Council of the Slovak Republic No. 191/1994 Z.z. on the denomination of municipalities in the language of national minorities.

2b) Section 4(1) of Act No. 184/1999 Z.z. on the use of the languages of national minorities.

Act No. 215/1995 Z.z. on geodesy and cartography, as amended

§ 18

(1) Decisions on the standardisation of the names of uninhabited geographical objects and specific inhabited objects in the territory of the Slovak Republic contained in the basic database of the geographic information system, the common forms of the Slovak names of inhabited and uninhabited geographic objects in territory outside the Slovak Republic and the names of extraterrestrial objects and the method for transcribing into Latin script the names of geographical objects in territories outside the Slovak Republic in which an alphabet other than the Latin alphabet or a writing system other than the Latin writing system is used (standardisation of geographical names) shall be taken by the office* based on the rules of Slovak orthography with the consent of the Ministry of Culture.

(2) The office may decide on standardisation of the names of water courses, protected areas and karst features in the territory of the Slovak Republic only with the consent of the Ministry of Environment and decide on the names of castles and chateaus only with the consent of the Ministry of Culture.

(3) The office shall decide on the standardisation of the common form of the Slovak names of inhabited and uninhabited geographical objects outside the territory of the Slovak Republic in accordance with international principles for the standardisation of geographical names.

(4) The office shall decide on the standardisation of geographical terminology; appeals may not be lodged against its decisions.

(5) It is prohibited to set names of uninhabited geographical objects that are long, that comprise more than three full content words, that offend moral, religious or national feeling and names that are inconsistent with the history of the territory.

(6) Decisions on the standardisation of geographical names shall not be subject to the Act on administrative proceedings.⁶⁾

(7) Standardised geographical names are binding for the publishers of cartographic works, professional publications, for use in the press and other mass communication media and in the official activities of public administration bodies; this shall also apply to the publishers of cartographic work and professional publications published in a foreign language and to usage in the press and other mass communication media disseminated in a foreign language.

(8) A decision on the standardisation of geographical names shall be published in the official journal.

6) Act No. 71/1967 Zb. on administrative proceedings (the Code of Administrative Procedure).

* Note of the Ministry of Culture: the term „the office“ means „the Office of Land Surveyor, Cartography and Cadastre of the Slovak Republic“.

Act No. 184/1999 Z.z. on the use of the languages of national minorities as amended by Act No. 318/2009 Z.z.

§ 4

- (1) A municipality satisfying the conditions laid down in section 2(1) may denominate streets and other local geographic features in the language of the minority.

Act of the National Council of the Slovak Republic No. 191/1994 Z.z. on denomination of municipalities in language of national minorities, as amended by Act No. 318/2009 Z.z.

§ 1

- (1) Municipalities, in which citizens of a national minority form at least 20% of the population (the municipality), are denominated in the language of the national minority on separate road signs denominating the beginning and end of the municipality.

- (2) Road signs are placed according to paragraph 1 under road signs bearing the name of the municipality which is always stated in the official language.¹⁾

- (3) The list of the denominations of municipalities in languages of national minorities is given in an annex to this law; denominations of municipalities have a local character.

- (4) The Ministry of Interior will provide by generally binding regulation a road sign for purposes of informative denomination of municipalities in languages of national minorities, which will differ from a road sign with the name of a municipality.

1) Section 3 of Act of the Slovak National Council No. 517/1990 on the territorial and administrative organisation of the Slovak Republic.
Section 3(a) of Act of the National Council of the Slovak Republic No. 270/1995 Z.z. on the state language of the Slovak Republic, as amended by Act No. 318/2009 Z.z.

§ 2

In official communication, especially in public documents, stamps of municipalities, cartographic works and postal communications, names of municipalities are exclusively in the state language.

§ 3

- (1) A municipality can decide by means of a vote of its inhabitants²⁾ on changing the denomination of a municipality given in the annex of this law and can determine the denomination of the municipality in the language of a national minority in this way, if the denomination is not specified in the annex to this law.

- (2) A vote pursuant to paragraph 1 is valid if an absolute majority of the population of the municipality eligible to vote under separate regulation³⁾ take part in it. The decision of the municipality is accepted if at least 80% of the inhabitants of the municipality participating in the vote cast valid votes in its favour.

(3) The provisions of paragraphs 1 and 2 do not apply to municipalities whose name was changed in the years 1867 to 1918 and 1938 to 1945.

2) Section 4(2)(b) of Act of the Slovak National Council No. 369/1990 Zb. on municipal government.

3) Section 2 of Act of the Slovak National Council no. 346/1990 Zb. on elections to the bodies of municipal government, as amended.

§ 4

State administration bodies⁴⁾ are obliged to ensure denomination of municipalities complies with this law.

4) Section 48 of decree of the Federal Ministry of Interior no. 99/1989 Zb. on the rules for traffic on roads (the road traffic rules), as amended

§ 13**Text books, teaching books and workbooks**

(2) In accordance with the right of children and pupils belonging to national minorities and ethnic groups to education in their mother tongue established by section 12(3), text books, teaching books and workbooks published in the language of a national minority shall present geographical names in the following forms:

- a) geographical names that are common and established in the language of the national minority shall be presented bilingually, first in the language of the relevant national minority and then in brackets or after a slash in the state language in the manner used in textbooks approved in the years 2002 to 2006,
- b) cartographic works shall be published in the state language,
- c) at the end of the textbook there shall be a list of geographical names in the form of a glossary in the language of the national minority and the state language.