

RESERVATIONS OF THE SLOVAK REPUBLIC CONCERNING PROVISIONS OF THE ACT ON HUNGARIANS LIVING IN NEIGHBOURING COUNTRIES (SUMMER 2002)

The Slovak Republic – after having analysed the Act on Hungarians Living in Neighbouring Countries – states that the objectives and some of the provisions of the law are in direct conflict with the principles of the international law, mainly with the principle of mutual equality, respect of sovereignty and jurisdiction of the independent states. These principles are stipulated in the basic international documents including the UN Declaration on principles guiding the good relations and co-operation among the states from 1970 and almost all relevant document of the Council of Europe and OSCE. The commitment to respect mentioned principles is also contained in the Treaty on Good Neighbourhood and Friendly Co-operation between the Slovak Republic and Hungary from 1995, which is the basic international legal document regulating the relations between the Slovak Republic and Hungary.

The legal consequences of the purpose and subject of the Hungarian Law – as unilateral act of the Hungarian legislative body – represent the unprecedented attempt to interfere with the legal competence of neighbouring states and the integrity of their legal systems. In this connection it is not possible to silently ignore the fact that Austria as a member of the European Union had been excluded from this legal act, since the Law is not in compliance with the *acquis communautaire*. Thus, the objective of the Hungarian Law stands for the attempt to introduce on the territory of another sovereign state and without its consent preferential treatment for a category of citizens defined by ethnic origin. The possible acceptance of such approach could consequently mean a substantial interference with the existing international and national framework for the protection of rights and freedoms of the citizens including the persons belonging to national minorities and could interfere with ensuring these rights.

As documented in the following analysis of certain provisions of the Law, the Law itself requires an cardinal amendment made by the Hungarian legislative body in order to make it compliant with the principles and norms of international law.

(A) Exterritorial effects of the law

1st paragraph of the Preamble – "... in order to comply with responsibilities for Hungarians living outside the borders (note: but only in neighbouring countries, with the exception of Austria), as enshrined in § 6 (3) of the Constitution of the Republic of Hungary, and in order to promote the preservation and development of their comprehensive contacts with Hungary..."

According to the **Venice Commission**, responsibility for the protection of minorities lies primarily with the home state, i.e. the state in the territory of which these minorities live.

5th paragraph of the Preamble – "in order to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole and to promote and preserve their well-being and awareness of national identity within their home country;"

§ 1 (1) – "The Act covers those persons of Hungarian nationality who are not Hungarian citizens, reside in (*inter alia*)the Slovak Republic..." and under **(2)** "this Act also applies to the spouse... and to the children of minor age... even if these persons are not of Hungarian nationality".

According to the generally valid principles of international law the application of a legal norm of foreign state on the territory of another state, also in relation to its citizens and organisations, is in conflict with the principle of equality of states and mutual respect of their sovereignty and jurisdiction, because of the interference with the exclusive legal authority of the home sovereign state.

§ 2 (1) concerns the application of preferences for persons with the status of Hungarian living abroad in the territory of Hungary and "in their permanent place of residence in their home countries"; provisions of § 2 are applicable only in connection with other paragraphs of the law (§10, §12, §13, §14 and §18), which enact the specific forms of preferences and assistance.

§ 23 – differentiates between the application of the preferences stipulated by the law in the territory of Hungary and in neighbouring countries, thereby confirming the argument on extraterritorial effects of this law.

According to the Venice Commission, a state can issue laws or regulations concerning foreign citizens as long as the effects of these laws or regulations are to take place within its borders only, otherwise – prior to the application of any measures abroad – the prior consent of the relevant home state needs to be requested; moreover, the extension of the application of the law to include spouses (who do not need to be of Hungarian nationality) is incompatible with the declared intention of the law to promote the national identity of persons belonging to the Hungarian nationality.

§ 19-21 – under these provisions of the Act, in matters related to obtaining the Hungarian identification document, the government of Hungary is represented by a local organisation established for this purpose in the territory of Slovakia, which has a significant effect as regards the provisions of the Slovak legal system concerning the protection of personal data.

§ 25 (1) and (2) – applications for benefits may be submitted in the neighbouring state to a non-profit organisation established to this end; the conclusion of a contract under the civil law between a public foundation established in Hungary and the foreign public foundation is expected.

Under **generally valid principles of international law**, governments may only develop activities in the territory of another state through their official (diplomatic or consular) authorities, and they have to co-act with and receive consent from the government of the home state; this also applies to the collection of applications for the issuance of the Slovak expatriate card, which is carried out exclusively by Slovak diplomatic representations abroad, or the consular department of the foreign affairs ministry. In accordance with these provisions Hungary authorizes non-governmental organisations established on the territory of another state to conduct activities which are characteristic for the bodies of sovereign state and so Hungary realises its political, legislative and *state* objectives on the territory of another sovereign state at the civil law level.

These provisions also concern the protection of personal data of Slovak citizens – Slovakia guarantees the protection of personal data, which can be processed only with the consent of the relevant person. § 20 (1) b) of the Act states that the recommending authority operating in Slovakia confirms the authenticity of the signature of the applicant for the Hungarian identification card. However, under § 58 (1) of Act No. 323/1992 Coll. on Notaries and Notarial Activities, only notaries, or employees authorised by them, are authorised to do this. Since 1 January 2002, municipalities also have this competence.

Under § 19 (2) and § 21 (3) f), one condition for receiving the card is that no criminal proceedings are being held against the applicant in Hungary; moreover, criminal proceedings against the applicant held by Slovak state authorities is not an obstacle to the granting of the card, which can cause a variety of complications in practice.

Firstly, under **generally valid legal principles**, this provision is at variance with the principle of the presumption of innocence (since the person is "only" being prosecuted); under § 3 (2) and § 4 (4), our Act No. 70/1997 Coll. on Slovak Expatriates requires that the applicant present documents confirming that he/she has not committed an intentional criminal act, for which he/she has been convicted.

(B) Exterritoriality and discrimination

§ 12 – defines the benefits for foreign Hungarian teachers lecturing in higher education institutions of the neighbouring state, which are identical with the benefits provided under law to teachers with Hungarian citizenship.

According to the Ministry of Education of the Slovak Republic, any forms of training undertaken abroad by teachers from schools with Hungarian as language of instruction carried out outside the framework of the agreed bilateral contractual commitments are considered as their private activity and are incompatible with the aims of further training for teachers in Slovakia; in the field of further training, teachers at Slovak schools with Hungarian as language of instruction are not discriminated against in any way.

§ 10 (1) and (3) – the provision of benefits to students of a neighbouring state's public educational institution (extraterritorial effect and discrimination against students on ethnic basis)

§ 14 (1) and (2) – concerns the provision of financial assistance for children in the territory of the neighbouring state educated in Hungarian and assistance for books and learning material, and, under (3), it can be requested from public foundations established for this purpose. Within the framework of evaluating the application, the recommending organisation operating in the given neighbouring state shall issue a position, which is in line with position of the Hungarian Minister of Education, on whether the educational institution concerned provides training in Hungarian.

According to the Ministry of Education of the Slovak Republic, the Hungarian Minister of Education can not take positions on the Slovak education system and we regard the provision of financial assistance directly to families as an impermissible intervention in the free decision-making by parents on the matter of the selection of school and as discrimination against citizens of Hungarian nationality, whose children attend schools with Slovak as language of instruction. Consequently, there is also a multiplication of the

discriminatory effects of the mentioned legal norm in relation to certain group of citizens of Hungarian origin.

Such an approach is in cardinal conflict with the principles of international law, has a strong influence on the right to decide freely which national group the citizen is member of and is in contradiction with the Slovak Constitution (Art. 12 (2 and 3)) stipulating the equality of all citizens and the prohibition of any influence on the free decision regarding the nationality.

(C) Intervention in the law-making competence of the Slovak Republic

§ 13 concerning the delegation of training outside the borders: (1) – promotion and delegation of organisations, operation of faculties of accredited Hungarian higher education institutions in neighbouring countries; (2) – promotion of the establishment, operation, and development of higher education institutions with Hungarian as language of instruction accredited in the neighbouring state.

Under the Slovak legal system, this is an intervention in the law-making concept and in the competence for the development of university education in the territory of Slovakia.

§18 – support for organisations outside the borders, which promote the goals of Hungarian national communities living in the neighbouring states. The final wording of the law does not differentiate between individual entities and talks about support for "organisations".

Under EU principles (Treaty establishing the EC) and the **Slovak legal system** (State Aid Act No. 231/1999 Coll.), any preferences for undertakings on ethnic basis are impermissible. Under § 39 of Act No. 136/2001 Coll. on the Protection of Competition, state administration authorities and territorial self-government authorities ensure that they do not restrict competition by assistance giving an apparent advantage to certain undertakings or by other means.

Under the Slovak Constitution, fundamental rights and freedoms "in the territory of Slovakia are guaranteed regardless of (...) language, affiliation to a nationality or ethnic group (...). No one may be harmed, preferred, or discriminated against on these grounds. Everyone has the right to freely decide on his/her nationality (Article 12 (2) and (3)). The provisions of the law stated above (A-C) are inconsistent with the Slovak Constitution. The same can be stated about §§ 19 and 20 of the Act, which concern the granting of the Hungarian Dependent Identification Document to persons of non-Hungarian nationality (spouse and children of minor age living in the same household).

(D) Alignment of the Act with the law of European Communities

§ 27 (2) – under this provision, "as from the date of accession of the Republic of Hungary to the European Union, the provisions of this law shall be applied in accordance with the Treaty on Accession and the law of European Communities".

This **provision, ipso facto**, means that the Act does not comply with the Treaty establishing the EC and the Treaty on EU and as of the date of Hungary's accession to the

EU, the Act will have to be applied in accordance with the Treaty establishing the EC (Amsterdam amendment, Articles 12, 13, and others).

In this connection the principle of presumption of respecting *acquis communautaire* by the candidate country cannot be ignored. According to this principle the compliance of the national legal norms with EU legislation and the respect of the EU principles create the basis for the evaluation of readiness of each candidate country for the EU accession. Each candidate country is obliged to harmonize the national legislation with the EU legislation during the accession process – prior to the date of accession. The above-mentioned provision of the Hungarian Law postponing the harmonization does not respect this principle.

(E) Provisions concerning areas already covered by bilateral agreements

According to the **Venice Commission**, preferential treatment of minorities in the territory of another state should not – unless approved by the home state – touch upon areas, in which existing bilateral treaties demonstrably prevent this. §7, §9, §11, §15, and §16 of the Act concern areas already covered by bilateral treaties between Slovakia and Hungary, which form a part of the Slovak legal system. For instance, the Act goes beyond quotas defined in the field of education.

§ 7 concerns issues of **healthcare and social rights**, which, however, have been addressed in the Agreement between the Czechoslovak Republic and the People's Republic of Hungary on Co-operation in the Field of Social Policy of 1959.

Slovakia objects the fact that the Act introduces a double standard in this area, since holders of the Hungarian identification document can "request the reimbursement of the costs of health care services in advance from a public foundation established to this end "; according to the conclusions of the **Venice Commission**, preferences in areas other than culture and education are provided only exceptionally, if they pursue a legitimate aim and are proportionate thereto.

These provisions (in particular (1) and (2)) can be interpreted as the creation of double standards for Slovak citizens in the provision of healthcare, or social services, which is **at variance with the rules that have already been contractually agreed**; the Slovak Republic is of the opinion that the quality and standard of healthcare and social care provided to citizens of the Slovak Republic, including the related financial services, should not depend on whether they are holders of the Hungarian identification card or not.

§ 9 states that the **Hungarian Minister of Education will determine the number of students** (including) from Slovakia at higher education institutions in Hungary; where in this regime then belongs the internationally agreed Programme of Co-operation between the Ministry of Education of the Slovak Republic and the Ministry of Education of the Republic of Hungary in the Fields of Education, Science, Sports and Youth for the 2000-2003 period, which is a standard agreement between two entities of international law on co-operation in the respective field? This analogically applies to **§ 11**, which – regardless of the above Co-operation Programme – states that the Hungarian Minister of Education shall determine the annual fixed number of foreign teachers, who will participate in postgraduate training in Hungary.

§§ 15 and 16 concern issues of **employment**, which, however, have been addressed through the Agreement between the Slovak Republic and the Republic of Hungary on the Mutual Employment of Citizens of 1999; provisions of the Act may have an impact on the observance of the bilaterally agreed quotas in this respect, are at variance with the principle of equal opportunities, are not based on the civic principle, and individuals may profit on them, if they continue to receive social benefits in Slovakia, while employed in Hungary.

[Quelle: <http://www.foreign.gov.sk>]