

LANGUAGE RIGHTS IN EDUCATION IN SLOVAKIA (2012)

Jaroslav Větrovský¹

1. Languages and the Slovak Legal Order

1.1 Slovak self-determination and the role of the state language

The independent Slovak Republic appeared on the world map on 1 January 1993. It was created as one of the successor states of the dissolved Czech and Slovak Federal Republic. Putting an end to the process of the Slovak political self-determination, this day thus represents an important milestone in Slovak history. The Slovak people, after they had been possessing different status within various multinational political units (Austria-Hungary, interwar Czechoslovakia, the puppet state of the Slovak Republic during the World War II., the postwar Czechoslovak Socialist Republic etc.), established a sovereign nation-state with Slovaks as a constituting nation.² Such a progress related to the political self-determination of the Slovak people has also had an inevitable impact on their cultural emancipation, including on the use of the Slovak language. In particular, in 1993 Slovak became for the first time the *only* official language which was to be used in the whole territory of the Slovak Republic.

The significant role that the Slovak language was deemed to play in the construction of the new state and in the consolidation of the common identity of its citizens found its expression in several legal documents. The most important has been the Constitution. Article 6 § 1 of the Constitution declares, in the very clear terms, that “the state language in the territory of the Slovak Republic is the Slovak language”. As to the other languages spoken in Slovakia, e.g. the minority languages, their use in official communications has not been constitutionally excluded. However, the regulation of their status as well as of the conditions of their use was not included into the Constitution and according to its Article 6 § 2 shall be “laid down by law”. The right to use other languages in communication with public authorities is not therefore directly enforceable and requires adoption of a specific statutory act, without which its “practical exercising” would be impossible.³ On the other hand, the Slovak language, being inserted directly into the Constitution, ceased to be considered as a simple mean of

¹ Jaroslav Větrovský is a teaching assistant at the Paneuropean University, Faculty of Law. In 2012 he obtained there a PhD. degree in international law. His research and professional activities are focused on human rights law and intercultural issues. He is also a practicing lawyer within a Czech NGO dealing with asylum and immigration matters (ASIM).

² See in particular the Preamble of the Slovak Constitution containing, *inter alia*, the following declaration: “We, the Slovak nation [...] recognizing the natural right of nations to self-determination, together with members of national minorities and ethnic groups living in the territory [...] adopt through our representatives this Constitution.”

³ Constitutional Court of the Slovak Republic (CCSR), judgment of 1 April 1996, no. I. ÚS 19/96.

communication. It became a constitutional value⁴ representing together with democracy, rule of law, common property of natural resources, and other constitutionally protected principles the very fundamentals of the Slovak Republic.

The existence of a constitutional guarantee related to the use of a state (official) language is not in itself unusual in the European context. The Venice Commission stressed that among 47 member-states of the Council of Europe, 36 included a language provision into their Constitutions, while only 10 refrained from doing so.⁵ However, in the case of Slovakia the status of the state language was further strengthened by the adoption of a specific statutory act – the very controversial Act on the State Language (ASL). At first glance, the purpose of the ASL seems to be completely neutral. One can argue, together with the Slovak Constitutional Court, that it was adopted in order to take in the consideration the “simultaneous use of several languages in the Slovak Republic and [to] regulate their mutual relation”.⁶ But a closer reading of the ASL leads rather to a different conclusion, suggesting a more ideological interpretation of its purpose. Especially the Act’s Preamble, which declares the Slovak language to be “the most important attribute of the Slovak nation’s specificity and the most precious value of its cultural heritage, as well as an expression of sovereignty of the Slovak Republic”, clearly demonstrates the nationalist character of intentions that finally prompted the legislator to its adoption.⁷

1.2 Formal recognition of minority languages and their legal status

Article 6 of the Constitution as well as several provisions of the ASL leaves no doubt about the importance of the role being entrusted to the Slovak language in the construction of an independent Slovakia. However, the possibility to use other languages in the public sphere has been preserved. In particular, it should be stressed that the Slovak Republic is bound by the main international treaties dealing with language rights or with human rights in general. Slovakia is a state party to both International Covenants (ICCPR and ICESCR), to the Convention on the Rights of the Child (CRC), the European Convention on Human Rights and Fundamental Freedoms (ECHR), the revised European Social Charter (ESC), the Framework Convention for the Protection of National Minorities (FCNM) as well as to the European Charter for Regional or Minority Languages (ECRML). The application of these treaties at the domestic level is in a general manner ensured by Article 1 § 2 of the Constitution according to which “[t]he Slovak Republic recognizes and honors general rules of international law, international treaties by which it is bound and its other international obligations”. Moreover, all the above mentioned treaties fall under the category of “ratified and promulgated international treaties on human rights and fundamental freedoms” within the meaning of Article 7 § 5 of the Constitution, which means, according to the same provision, that in case of conflict they “shall have primacy over the statutory law”.

In addition, the possibility or, eventually, the right to use languages other than Slovak in official communications is guaranteed by the domestic legal provisions. It was already mentioned that the basic norm allowing the use of different languages in Slovakia is contained in Article 6 § 2 of the Constitution. However, it was also pointed out that this provision neither specifies what are the languages the use of which it permits, nor who are the persons being authorized to use them and under which conditions. The regulation of these issues has been left for the subsequent work of the legislator. A more specific guarantee related to the use of languages in Slovakia is nevertheless contained in Article 34 § 2 of the Constitution. Article 34 § 2 is in principle based on the language regime set up by Article 6 § 2 of the Constitution. But unlike this provision it doesn’t consider the use of various languages in official communications as a mere possibility. It considers it as a “right” (Article 34 § 2-

⁴ “Quite often the fact that a country becomes independent is a reason to introduce a language provision in the constitution. This provision is then seen as a guarantee of national identity and unity; maintenance of the national language is regarded as a constitutional value.” See European Commission for Democracy through Law (Venice Commission) (2010), *Opinion on the Act on the State Language of the Slovak Republic*, opinion no. 555/2009, adopted 15-16 October 2010, Council of Europe, Venice, §36.

⁵ Venice Commission (2010), *op. cit.*, §34. One member-state, the United Kingdom, has no written Constitution.

⁶ CCSR, judgment of 1 April 1996, no. I. ÚS 19/96.

⁷ Some representatives of Hungarian political parties in Slovakia even labeled the ASL as “fascist”. See SME (newspapers), *Fašizoidný návrh zákona o štátnom jazyku (A fascist proposal of the Act on the State Language)*, published on 7 July 1995, available at <http://www.sme.sk/c/2125527/mos-fasizoidny-navrh-zakona-o-statnom-jazyku.html>.

b) which, together with the “right to education in their own language” (Article 34 § 2-a), must be guaranteed to all “citizens belonging to national minorities or ethnic groups”.

As to the various legal issues that the language regime established by the Constitution necessarily implies (e.g. definition of minority languages, status of minority languages, conditions under which they can be used in official communications, relation of the minority languages to the Slovak language etc.), they are regulated by specific statutory act or acts the existence of which Articles 34 § 2 and 6 § 2 explicitly assume. The most important is the Act on the Use of the Languages of National Minorities (AULNM). It was adopted in 1999, but has been amended several times since then; the last amendment act being passed in June 2011 (see below Chapter 1.3). The main role of the AULNM is to give effect to Article 34 § 2-b of the Constitution, i.e. “to lay down [...] the rules governing the use of Minority Languages [...] in official communications” (Article 1 § 1 of the AULNM). In order to achieve it, the AULNM contains several important provisions. First of all, Article 1 § 1 confirms that every “citizen of the Slovak Republic who is a person belonging to a national minority has the right to use, apart from the State language, their national minority language”. In addition, Article 1 § 2 includes an exhaustive list of languages being officially recognized as minority languages and determines the conditions under which they can be used in official communications. Pursuant to Article 1 § 2 of the AULNM there are nine minority languages spoken in Slovakia: the Bulgarian language, the Czech language, the Croatian language, the Hungarian language, the Polish language, the Roma language, the Ruthenian language, and the Ukrainian language. As to the conditions of their use, Article 2 § 1 of the AULNM specifies that only a citizen belonging to a national minority and residing in a municipality where “according to the last two censuses the minority represents at least 15% of all inhabitants” may invoke them in official communications and only in relation to the authorities having their office in such a municipality.

Concerning the implementation of Article 34 § 2-a of the Constitution, the right to education in a minority language, Article 5 § 2 of the AULNM states that the Act does not apply to “the pre-school education [as well as the] system of primary and secondary schools”. As a result, the use of national minority languages in education has been regulated by a specific legal act, the School Act of 2008, to which Article 5 § 2 of the AULNM explicitly refers.⁸ Similarly, the AULNM does not resolve the question of relation between the nine minority languages and the state (Slovak) language. This became a subject of regulation in the Act on the State Language (ASL), declaring without any ambiguity that “[t]he state language shall have priority over other languages used in the territory of the Slovak Republic” (Article 1 § 2). The ASL thus explicitly confirms what Article 6 of the Constitution only implicitly assumes: the privileged position of the Slovak language in relation to other (minority) languages.

Article 1 § 2 of the ASL and the privileged position it guarantees to the Slovak language can be regarded as one of the most controversial provisions within the whole Act. It was also one of the provisions attacked in the Constitutional Court for their alleged discriminating and, therefore, unconstitutional character. Immediately after the ASL was adopted a group of deputies complained that Article 1 § 2 “creates a situation, when other languages inevitably get into the position of second-class languages and people who speak another language than the Slovak become inferior and discriminated second-class citizens”. The claim was rejected. In its judgment the Constitutional Court argued that the privileged position of the Slovak language must be considered as legitimate, having regard to its special purpose of a “general vehicle of communication for all [Slovak] citizens” (see the Preamble of the ASL). As a result, the statutory law must ensure that if “this purpose can’t be achieved by other language than Slovak, the latter has priority over ‘other languages used in the territory of the Slovak Republic’”.⁹

1.3 An overview of current debates

The ASL as well as the controversy about its constitutionality clearly shows that the relation between the minority languages and the state language is mostly considered as a matter of concurrence

⁸ The list of minority languages contained in the AULNM nevertheless applies, at least *de facto*, also to education. See below Chapter 2.2.

⁹ CCSR, judgment of 1 April 1996, no. I. ÚS 19/96.

and not of complementarity. What the former gain, the latter inevitably loses. Activities aiming to strengthen the status of minority languages in Slovakia generally raise concerns of the majority that the role of their mother tongue would decrease. This is particularly true when the Slovak language is confronted with Hungarian, i.e. with language spoken by the most important national minority living in Slovakia.¹⁰ As to the other minority languages, their role and therefore the concerns they raise within the majority population are much less significant. This is partly because the number of persons belonging to a given minority is not so high, partly because unlike the Hungarian minority other national minorities are much less politically organized.

The tension related to the coexistence of the Hungarian and the Slovak language in Slovakia can be demonstrated on the recent parliamentary debates accompanying the process of amendment of the AULNM.¹¹ As J. Lajčáková and A. Chudžíková pointed out, these debates leave no doubt that the “principal motive affecting the legislative process was not meting out justice but the feeling of threat. In other words, the issue at stake was not how to draft legislation that would grant minorities best possible chances to preserve their mother tongue and ideally put them on equal footing while protecting them from apparent language assimilation that is further catalyzed by State Language Act. The legislators’ effort focused on how to prevent Magyarization of ethnic Slovaks through this law.”¹²

The traditional opponents to any improvement of the status of minority languages were the deputies of the Slovak National Party.¹³ According to their leader, Mr. Ján Slota, “[t]his Magyarization amendment goes clearly at the expense of the state language because once it is passed no one will ever need to study or use Slovak as the state language”. But similar statements directed against the use of the Hungarian language, especially in official communications, were also made by several deputies of the SMER party (social-democrats). Mr. Marek Maďarič, who is currently the Minister of Culture, for example declared: “This bill will discriminate against Slovaks without sufficient command of a minority language [...]. It is logical that when hiring employees, authorities in Southern Slovakia will prefer those who speak Hungarian while others will be discriminated against because they don’t speak Hungarian. Or, if they don’t want to lose their jobs, they will have to learn Hungarian.”

The content of the quoted statements clearly illustrate the effort of several deputies to present the proposed amendments of the AULNM as profiting only the Hungarian minority and as representing threat to all persons belonging to the Slovak nation. Moreover, such attempts to juxtapose both languages “as if one automatically exclude[s] another”¹⁴ seem to be omnipresent in all debates about the minority language issues, irrespective whether they are held in Parliament or elsewhere. Mrs. Jana Dubovcová, a deputy of the Slovak Democratic and Christian Union, cogently described the general situation by the following terms: “From previous addresses presented by politicians – not only regarding this bill but in previous debates as well – I noticed that Slovak politicians most often present this issue in such a way as if we detracted from the majority nation’s rights by granting certain rights to minorities. They often create an impression that granting a certain right to the minority or extending it would threaten stability and security of our country. Some of them even view it so dangerous that they mention, say, autonomy in this context. They try to present the rights granted to national minorities as inversely proportional to those of the majority nation, as if the two inevitably had to collide. I hereby reject this approach. And I believe it is erroneous; that this attitude is wrong.”

2. Language rights in primary and secondary education

2.1 General legal principles

¹⁰ Gažovičová, T. (2011), ‘Minority Languages in Political Discourse’, *Minority Policy in Slovakia*, 4, p. 14.

¹¹ The main point of the debates and perhaps the most important point of the amendment act as such concerned the determination of proportion that the persons belonging to a national minority and residing in a certain municipality must attain in order to have the right to use their language in official communications. It was already mentioned that the current wording of the ASL fixes this proportion at 15% (see Art. 2 §1 of the ASL); it was 20% before the amendments and the governmental proposal was to lower it to 10%.¹¹

¹² Lajčáková, J. and Chudžíková, A. (2011), ‘Parliament Passes Clipped Amendment to Minority Language Use Act, President Refuses to Sign It’, *Minority Policy in Slovakia*, 2, p. 4.

¹³ The English translation of parliamentary debates was taken from Gažovičová, T. (2011), ‘Minority Languages in Political Discourse’, *Minority Policy in Slovakia*, 4, pp. 12-15.

¹⁴ *Ibid.*, p. 13.

The right to education and the compulsory character of the school attendance are in a general manner guaranteed by the Constitution (Article 42 § 1). The Constitution also provides that the education at primary and secondary schools is free (Article 42 § 2). As to the other requirements related to the application of the right to education, they shall be determined by the statutory law.

The most important statutory act dealing with the legal issues of primary and secondary education, including the implementation of the language rights, is the School Act of 2008 (SA). Pursuant to Article 12 § 2 of the SA the teaching language at schools is the state language, if it is not provided otherwise. It follows that the SA does not challenge the privileged position of the Slovak language within Slovakia, already established by the Constitution and the ASL. However, as the wording of Article 12 § 2 suggests, it contains several exceptions, when the educational process can be conducted also in a different language. The close reading of the SA allows us to distinguish three situations when it can be done so: if the education is provided in a minority language (Article 12 §§ 3 a 5 of SA; see also Article 34 § 2-b of the Constitution), if it is provided in bilingual schools or classes (Article 12 § 6 of the SA) or if it is provided in private educational facilities for alien minors granted with permanent residence in Slovakia (Article 146 § 7 of the SA). Article 12 § 9 of the SA specifies that “language in which a subject is taught, is [generally] also the language in which the examination is performed”.

The application of the right to use a minority language in education has not raised any significant legal problems or controversy to this day. Unlike the right of national minorities to use their language in official communications (Article 34 § 2-b of the Constitution), there is no judgment of the Constitutional Court or other higher Court directly related to the issue. During the period of its existence the Constitutional Court of the Slovak Republic has dealt with only one application related to the language rights in education. This concerned Article 3 § 1 of the already abrogated School Act of 1984 which recognized the right to education in a minority language only to persons belonging to the Czech, Hungarian, German, Polish, or Ruthenian national minority. The applicant claimed that the absence of the Roma minority on this list was in contradiction with the Roma’s right to education in minority language guaranteed by Article 34 § 2-a of the Constitution. Unfortunately, the complaint was rejected for procedural reasons, without being considered in merit.¹⁵ Moreover, it should be pointed out that according to the School Act of 2008 actually in force the use of Roma language in education is allowed and benefits the same guarantees as other minority languages mentioned in Article 1 § 2 of the AULNM.

One of the reasons, why the case-law on application of language rights in education is not sufficiently developed in Slovakia, probably lies in the fact that the language rights matters are not in the center of attention of different NGOs involved in the minorities’ rights litigation. Their effort is mainly focused on the problem of segregation (of Roma children) in primary schools. As a result, there is also no judgment or decision of the European Court of Human Rights on this issue and no application, where the language rights are invoked, is actually pending and has been communicated to the government. The same is valid with respect to the UN Human Rights Committee.

2.2 Education of Persons Belonging to a National Minority

It was already mentioned that the teaching language at Slovak schools is primarily Slovak (Article 12 § 2 of the SA). Only citizens belonging to a national minority may invoke the right to education in a different language (Article 12 § 3 of the SA together with Article 34 § 2-a of the Constitution). Pursuant to Article 1 § 2 of the AULNM there are nine minority languages officially recognized in Slovakia. These are the Bulgarian language, the Czech language, the Croatian language, the Hungarian language, the Polish language, the Roma language, the Ruthenian language, and the Ukrainian language.

It was also pointed out that the Slovak Republic is the state-party to the main international treaties protecting national minorities and their language rights. In particular, Slovakia is bound by the Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (ECRML), i.e. by the key legal instruments adopted within the Council of Europe and dealing with the minority rights issues.

¹⁵ CCSR, decision of 13 February 2002, no. III. ÚS 18/02.

With regard to Article 8 of the ECRML (Education) and to the nature of commitments that the Slovak Republic is bound to observe, we can divide the minority languages into three groups. The first group is only comprised of the Hungarian language. Being the mother tongue of more than 500.000 people living in Slovakia, which is almost 10% of the Slovak population, it is by far the most spoken minority language in the country.¹⁶ It is also the only language in relation to which the Slovak Republic undertook the most rigorous commitment to make available the whole primary and secondary education in a minority language (Article 8 §§ 1-b-i and 1-c-i of the ECRML) and, moreover, a rare example of when the undertaken commitments are fulfilled in their entirety.¹⁷ According to the statistics, there were 118 primary schools and 29 secondary schools run by the state in the school year 2011-2012 with Hungarian as a teaching language. In other words, there were almost 30.000 pupils of public primary schools and 12.000 pupils of public secondary schools being taught exclusively in Hungarian.¹⁸ Furthermore, minority schools providing instruction in the Hungarian language are currently the only ones for which the textbooks in a minority language are available for the whole curriculum.¹⁹

The Ruthenian and the Ukrainian languages belong to the second group of the minority languages. In their case the commitment of the Slovak Republic consists of making available “a substantial part” of primary and secondary education in the relevant language (Article 8 §§ 1-b-ii and 1-c-ii of the ECRML). As the Committee of Experts pointed out, such an undertaking “requires the provision of a substantial part of primary education in [the minority language], meaning that in addition to teaching of the language other subjects must also be taught *in* [this language]”.²⁰ However, in the school year 2011-2012 there were only two classes in Slovakia with Ruthenian as a teaching language.²¹ As a result only 27 pupils pursued their primary education in the Ruthenian language, although the Ruthenians represent the third largest national minority in Slovakia consisting of more than 30.000 persons.²² Moreover, no secondary school providing “a substantial part” of instruction in the Ruthenian language exists in Slovakia. As to the Ukrainian language, there are six primary schools (28 classes) and one secondary school allowing the pupils belonging to the Ukrainian national minority to complete their education, at least partly, in their mother tongue.²³ However, several representatives of the Ukrainian minority complained that the number of subjects taught in their language has decreased in some schools.²⁴ No textbooks are available either in Ruthenian or in Ukrainian, except the textbooks for the teaching the languages themselves.

The Bulgarian, Czech, Croatian, German, Polish, and Roma languages create the third group of the minority languages. In their case the commitment undertaken by the Slovak Republic is limited to the duty to provide for the teaching of a relevant minority language as an integral part of the curriculum in primary and secondary schools. However, there is only one public school facility in Slovakia satisfying the requirement in relation to German and no public school satisfying the requirement in relation to any other of these languages.²⁵ Such a situation is particularly alarming in relation to the Roma language which more than 120.000 persons living in Slovakia consider as being their mother tongue.²⁶ Although the government officially declares that primary and secondary schools “have conditions” for the introduction of the Roma language and the Roma literature into their educational

¹⁶ Statistical Office of the Slovak Republic (2011), *Population in the Slovak Republic and in the Slovak Regions, Selected Results of the 2011 Population and Housing Census*, p. 63, available in Slovak at http://www.scitanie2011.sk/wp-content/uploads/DEF.DEF_Obyvatelstvo-v-Slovenskej-republike-a-krajoch-SR.pdf.

¹⁷ Committee of Experts (2009), *Report of the Committee of Experts on the Application of the Charter in the Slovak Republic*, 2nd monitoring cycle, adopted on 24 April 2009, §§ 178-183.

¹⁸ Institute for Information and Forecasting in Education (2011), *Statistics Yearbook 2011-2012*, available in Slovak at <http://www.uips.sk/statistiky/statisticka-rocenka>.

¹⁹ Even though some concerns were raised about their out-dated character. Committee of Experts (2009), *op. cit.*, § 179.

²⁰ *Ibid.*, § 435.

²¹ Institute for Information and Forecasting in Education (2011), *op. cit.*

²² Statistical Office of the Slovak Republic (2011), *op. cit.*, p. 53.

²³ Institute for Information and Forecasting in Education (2011), *op. cit.*

²⁴ Committee of Experts (2009), *op. cit.*, § 575.

²⁵ Institute for Information and Forecasting in Education (2011), *op. cit.* As to the private schools there is only one primary and no secondary school providing instruction in Bulgarian and several primary and/or secondary schools providing instruction in German.

²⁶ Statistical Office of the Slovak Republic (2011), *op. cit.*, p. 63.

program,²⁷ only two primary and secondary schools in the whole Slovakia, both private, offer the possibility to study the Roma language as an optional subject.²⁸

2.3 Education of Alien Minors

All basic rules related to the legal regime of primary and secondary education of aliens in Slovakia are contained in Article 146 of the SA. The same legal regime thus commonly applies to various categories of non-nationals, irrespective whether they are citizens of other EU member-state, third country nationals, asylum seekers, recognized refugees, aliens with granted residence permit, or even the stateless persons (see Article 146 § 1 of the SA). The only category of aliens not explicitly mentioned in Article 146, and therefore probably falling outside the scope of this provision, is the category of persons without an authorization to stay in the country (irregular migrants). Consequently, even though they are not completely excluded from access to the school facilities, the practical enforcement of their right to education is very difficult.²⁹

In 2005 the Ministry of Education adopted a strategic document called National Plan for Human Rights Education for 2005-2014. It was created as a national response to the World Programme for Human Rights Education announced by the UN General Assembly.³⁰ Although the primal aim of the National Plan was not to deal specifically with education of aliens and their language rights, it contains two important directives related to this problem. On one hand the document emphasizes the role of Slovak as a teaching language and calls to “eliminate the [eventual] language barriers”. On the other hand it acknowledges the importance of mother tongues for their speakers and suggests to “[i]mplement the activities aiming at promoting the mother tongue of children and their original culture”.³¹ Such an approach also corresponds to the general Conception of Integration of Aliens in the Slovak Republic, adopted in 2009 by the government. According to this Conception the integration process should be based on “mutual adaptation”, which means that aliens “contribute to the formation of a common culture and the majority society respects them and supports their diversity”.³²

However, the level of implementation of the adopted strategies into the practice is very low. As the text of Article 146 of the SA suggests and the subsequent practice confirms, the educational process of alien minors in Slovakia is based rather on the assimilation principle than on the principle of integration. Consequently, the instruction provided in the Slovak language is still considered as a rule, while the possibilities of education “aiming at promoting the mother tongue” of alien minors remain very limited.

2.3.1 Instruction of alien minors provided in the Slovak language

According to Article 146 § 2 of the SA the instruction of alien minors is provided “under the same conditions” as to the citizens of the Slovak Republic. Consequently, Article 12 § 2 of the SA, declaring Slovak as a teaching language, applies also to them. In order to enable the alien minors, who don't speak the Slovak language, to fully participate in the educational process, Article 146 § 3 of the SA assumes that the courses of the Slovak language “shall be organized”. However, as the recent report about the education of alien minors in Slovakia pointed out, the system established by Article 146 § 3 is not working in practice. Only two courses of the Slovak language were organized in the country between the years 2008 (adoption of the SA) and 2010.³³ Moreover, according to Article 2-j of the SA the alien minors are not considered as “children with special educational needs” within the meaning of this provision. As a result the schools do not have any possibility to obtain state

²⁷ The Slovak Republic (2012), *European Charter for Regional or Minority Languages, third periodical report*, Bratislava, pp. 117-118.

²⁸ Institute for Information and Forecasting in Education (2011), op. cit.

²⁹ Drál', P. et al. (2011), *Vzdelávanie detí cudzincov na Slovensku (Education of Alien Minors in Slovakia)*, CVEK-NMŠ, Bratislava, p. 27.

³⁰ See GA resolution, *World Programme for Human Rights Education*, A/RES/59/113, adopted on 10 December 2004.

³¹ Ministry of Education (2005), *National Plan for Human Rights Education for 2005-2014*, Bratislava, p. 10, available in Slovak at <http://www2.ohchr.org/english/issues/education/training/docs/actions-plans/slovakia.pdf>.

³² Ministry of Labour, Social Affairs and Family of the Slovak Republic (2009), *Concept of Foreigner Integration in the Slovak Republic*, Bratislava, available in English at http://ec.europa.eu/ewsi/UDRW/images/items/docl_12636_716907546.pdf.

³³ Drál', P. et al. (2011), op. cit., p. 45.

subventions allowing them to adopt the necessary measures which would help the children cross the language barrier (e.g. to provide them with a teaching assistant).³⁴

The negative consequences caused by the principle of formal equality embodied in Article 146 § 2 of the SA have been further increased by the Constitutional Court. In the case concerning the Slovak Antidiscrimination Act the government requested the Court to declare that a statutory provision allowing the adoption of “specific compensatory measures to prevent disadvantages linked to racial or ethnic origin” is not conform to the constitutional prohibition of discrimination (Article 12 of the Constitution).³⁵ By a majority of seven votes to four the Constitutional Court upheld the petition. According to the Court, while the possibility to adopt specific compensatory measures is not completely excluded, “the constitutional order of the Slovak Republic recognizes as a generally accepted approach to ensuring equal rights only such a deviation from a universal understanding of equity (non-discrimination) that has an explicit constitutional basis responding to natural inequalities among people which, if they are not compensated through legal measures, could lead to unjustified severity against certain groups of people”.³⁶

The Court then referred to Article 38 §§ 1 and 2 of the Constitution which assume that “women, minors, and disabled persons” are entitled to special working conditions and other special treatment in relation to their work. According to the Court such a consideration of the “de facto inequality [of these persons] is a legitimate objective that can not be achieved by any other way other than by the determined legislative solution which also includes positive action”. However, no constitutional basis which would “justify the constitutionally permissible deviation from the universal principle of equality expressed in Article 12 [of the Constitution]” exists in relation to the contested provision of the Antidiscrimination Act.³⁷ “[B]y allowing the positive action, which includes also the specific compensatory measures, the contested provision of the Antidiscrimination Act constitutes [*inter alia*] an advantage (positive discrimination) of persons with regard to their racial or ethnic origin [...] without having a constitutionally acceptable basis.”³⁸ Therefore the Court concluded that the contested provision of the Antidiscrimination Act must be regarded as in breach of the Constitution which “prohibits positive as well as negative discrimination”.³⁹

Four judges expressed dissenting opinions. They criticized namely the way how the majority interpreted the notion of discrimination, without correctly distinguishing between the various key terms, in particular between direct and indirect discrimination, between material and formal equality and between specific compensatory measures and positive discrimination. Judge Mézsáros rightly pointed out in this context that “the specific compensatory measures [...] can’t be considered without any doubt as the positive discrimination, i.e. the advantaging within the meaning of the Constitution, and for this reason they can’t be in breach with [its] Article 12 § 2”.⁴⁰ Nevertheless, despite the controversies that the judgment provoked, it has not been overturned until now. By prohibiting any compensatory measures, except those explicitly stated in Article 38 of the Constitution, the judgment actually represents a serious obstacle to an effective fight against any indirect discrimination, including the discrimination in the field of education.

2.3.2 Instruction of alien minors provided in other languages

The principle of formal equality governing the education of alien minors does not imply that the education in the Slovak language is the only option available to them. Firstly, the prohibition of

³⁴ The situation is slightly different in relation to asylum seekers and persons with granted asylum or subsidiary protection. According to the Asylum Act both categories of aliens have the right, or even the duty in some cases (e.g. in the case of children for which the school attendance is compulsory) to attend the free courses of the Slovak language. The courses are generally provided by different NGOs and financed by the Ministry of Interior. It was nevertheless pointed out that such an instruction of the Slovak language often misses conception and does not consider the personal situation of the concerned aliens and their linguistic needs. See Bargerová, Z., Fajnorová, K. and Chudžíková, A. (2011), *Stav integrácie cudzincov s doplnkovou ochranou do spoločnosti*, Stimul, Bratislava, p. 41.

³⁵ CCSR, judgment of 6 October 2005, no. PL. ÚS 8/04. The English summary of the judgment is available at <http://www.non-discrimination.net/content/media/LR-3-SK-1.pdf>.

³⁶ *Ibid.*, § 24.

³⁷ *Ibid.*

³⁸ *Ibid.*, § 25.

³⁹ *Ibid.*, § 24.

⁴⁰ Dissenting opinion of judge Mézsáros, §5.

discrimination under the EU legislation requires the language rights guaranteed to national minorities living in one Member State to be extended also to citizens of other Member State when exercising their freedom of movement.⁴¹ These citizens are, according to the Court of Justice of the European Union, “in principle entitled [...] to treatment no less favourable than that accorded to nationals of the host State so far as concerns the use of languages which are spoken there”.⁴² The right to education in a minority language thus belongs to the EU citizens residing in Slovakia to the same extent as to the Slovak nationals. And secondly, Article 12 §§ 6 and 7 of the SA assume that education may also be provided in a foreign language (i.e. other language than minority one), under the condition that the Slovak language and literature make an integral part of the curriculum. This so called bilingual education is opened to citizens as well as to alien minors.⁴³

3. Language rights in higher education

The system of higher education in Slovakia is regulated by a specific statutory act, the Higher Education Act (HEA). Consequently, all issues related to higher education fall outside the scope of the School Act (SA) which applies only to instruction provided at primary and secondary schools. However, the legal regime of language rights remains very similar, without regard to the various levels of education it concerns.

As to the citizens of the Slovak Republic who belong to a national minority, Article 34 § 2-b of the Constitution (right to education in a minority language) applies also to them. Similarly, the international obligations resulting namely from the European Charter of Regional or Minority Languages (ECRML) concern the education at universities too. As a result, Slovakia is bound to “make available university and other higher education in regional or minority languages” in relation to the Hungarian language (Article 8 § 1-e-i of the ECRML) and to “provide facilities for the study of these languages as university and higher education subjects” in relation to other minority languages recognized by the AULNM (Article 8 § 1-e-ii of the ECRML). Both undertaken commitments seem to be currently fulfilled. A possibility to study the minority languages exists with respect to all of them, except Czech “because of its extraordinary similarity to Slovak”.⁴⁴ A higher education in the Hungarian language is also provided.⁴⁵

Concerning the higher education provided for foreign nationals, Article 55 § 2 of the HEA emphasizes that the “rights provided in [the HEA] shall be guaranteed equally to all applicants and students in accordance with the principle of equal treatment in education”. Every person, irrespective whether they are citizens of the Slovak Republic, citizens of another Member State or third country nationals, has thus the right to pursue a chosen study programme if they satisfy the entry requirements (Article 55 § 1 of the HEA). Regarding the language aspects of education, it follows that an alien intending to study a programme, which is provided in the Slovak language, must complete the education in Slovak without any compensatory measures. On the other hand, if a study programme is taught in a foreign language, an alien is entitled to pursue it under the same conditions as the Slovak citizen. In particular, the calculation of the eventual tuition fees cannot be determined on the basis of the language in which the higher education is provided.⁴⁶

⁴¹ Benoit-Rohmer, F. (2005), ‘Article II-82, Diversité culturelle, religieuse et linguistique’, in: Burgorgue-Larsen L., Levade A. and Picod F. (eds), *Traité établissant une Constitution pour l’Europe, Commentaire article par article*, Bruylant, Bruxelles, p. 316.

⁴² CJEU, *Bickel and Franz*, judgment of 24 November 1998, no. C-274/96, § 16.

⁴³ Theoretically the SA assumes also a third possibility of education in a foreign or minority language. Pursuant to Art. 146 § 7 “other schools beside the public schools may be established and paid education in other languages than the state language may be provided for children of aliens who have been granted residence permit in the Slovak Republic”. However, no such a school has been established until know. See Gažovičová, T. (2011), ‘Supporting migrants’ mother tongues’, *Minority Policy in Slovakia*, 2, p. 11.

⁴⁴ The Slovak Republic (2012), op. cit., p. 89.

⁴⁵ The J. Selye University, with Hungarian as a teaching language, was established in 2004 in Komárno and consists actually of three faculties – Faculty of Education, of Economy, and of Theology.

⁴⁶ However, the Ministry of Education recently announced the intention to change the actual legal situation and to introduce special tuition fees for study programmes taught in a foreign language under the condition that the same programme is also available in Slovak. See SME (newspapers), ‘*Za programy v cudzom jazyku si zrejme študenti zaplatia (Students will probably pay for programs in a foreign language)*’, published on 15 July 2012, accessible at <http://www.sme.sk/c/6457930/za-programy-v-cudzom-jazyku-si-zrejme-studenti-zaplatia.html>.

4. Conclusion

We can thus identify two important rules governing the legal regime of the language rights in education in Slovakia. The first is embodied in Article 1 § 2 of the ASL and determines the relation between the nine minority languages officially recognized by the AULNM and the state language. It provides that the state language shall have priority over any other languages used in the territory of the Slovak Republic. The second is based on the principle of formal equality and concerns in particular the alien minors attending primary and secondary schools. It requires the educational facilities to provide instruction “under the same conditions” for aliens as for the Slovak citizens. Interpreted together with the constitutional prohibition of discrimination and in the light of the Slovak Constitutional Court’s case-law, this requirement currently represents a serious obstacle to adoption of any compensatory measures that could eventually help the alien minors cross the language barrier.

Bibliography

Books, chapters, articles

Bargerová, Z., Fajnorová, K. and Chudžíková, A. (2011), *Stav integrácie cudzincov s doplnkovou ochranou do spoločnosti (The State of Integration of Aliens Granted with the Subsidiary Protection into the Society)*, Stimul, Bratislava;

Benoit-Rohmer, F. (2005), ‘Article II-82, Diversité culturelle, religieuse et linguistique’, in: Burgogue-Larsen L., Levade A. and Picod F. (eds), *Traité établissant une Constitution pour l’Europe, Commentaire article par article*, Bruylant, Bruxelles;

Drál, P. et al. (2011), *Vzdelávanie detí cudzincov na Slovensku (Education of Alien Minors in Slovakia)*, CVEK-NMŠ, Bratislava;

Gažovičová, T. (2011), ‘Supporting migrants’ mother tongues’, *Minority Policy in Slovakia*, 2;

Gažovičová, T. (2011), ‘Minority Languages in Political Discourse’, *Minority Policy in Slovakia*, 4;

Lajčáková, J. and Chudžíková, A. (2011), ‘Parliament Passes Clipped Amendment to Minority Language Use Act, President Refuses to Sign It’, *Minority Policy in Slovakia*, 2.

Reports, newspaper articles, other documents

European Commission for Democracy through Law (Venice Commission) (2010), *Opinion on the Act on the State Language of the Slovak Republic*, opinion no. 555/2009, adopted 15-16 October 2010, Council of Europe, Venice;

Institute for Information and Forecasting in Education (2011), *Statistics Yearbook 2011-2012* [on line];

Ministry of Education (2005), *National Plan for Human Rights Education for 2005-2014*, Bratislava [on line];

Ministry of Labour, Social Affairs and Family of the Slovak Republic (2009), *Concept of Foreigner Integration in the Slovak Republic*, Bratislava [on line];

SME (newspapers), '*Fašizoidný návrh zákona o štátnom jazyku (A fascist proposal of the Act on the State Language)*', published on 7 July 1995 [on line];

SME (newspaper), '*Za programy v cudzom jazyku si zrejme študenti zaplatia (Students will probably pay for programs in a foreign language)*', published on 15 July 2012 [on line].

Statistical Office of the Slovak Republic (2011), *Population in the Slovak Republic and in the Slovak Regions, Selected Results of the 2011 Population and Housing Census* [on line];