



**Additional Written Comments by the Roundtable of Hungarians in Slovakia (RHS)  
on the Fifth Report submitted by the Slovak Republic  
on the implementation of the Framework Convention for the Protection of National  
Minorities (received 31 January 2019) for consideration by the Council of Europe’s  
Advisory Committee on the Framework Convention**

**Somorja – Šamorín, 28 September 2020**

Questions and comments are welcome on the address [info@kerekasztal.org](mailto:info@kerekasztal.org).

The Roundtable of Hungarians in Slovakia (RHS) is an umbrella organization of non-governmental organizations active in the field of advocacy, culture, education, and linguistic rights of the Hungarian minority in Slovakia. The RHS represents the Hungarian community’s views vis-à-vis state bodies and the general public. It has developed and adopted its own proposals of laws on the use of minority languages, financing of minority cultures, and minority self-governments. It also submitted comments on governmental proposals related to these areas.

The RHS welcomes the Slovak Government’s Fifth Report on the Implementation of the Framework Convention for the Protection of National Minorities submitted to the Council of Europe’s Advisory Committee on the Framework Convention on 31 January 2019.

The RHS submitted its Comments on the Government’s Fifth Report on 15 June 2019. The following Additional Written Comments are supplementing those earlier comments, and are providing updated information for the purposes of the Advisory Committee’s delegation’s visit to Slovakia in October 2020. We are looking forward to serve the Advisory Committee with comments and submissions in the future.

## **Contents**

I. Article 3, 4, and 6 – Beneš decrees.....	2
II. Article 3 – Citizenship .....	3
III. Article 3 – Census .....	5
IV. Article 10 – Birth certificates.....	5
Annexes.....	5

## I. Article 3, 4, and 6 – Beneš decrees

1. One of the thorniest issues in the history of Hungarian–Slovak relationships in Slovakia are the so-called Beneš decrees. These were laws (decrees) adopted at the end and shortly after World War II, which collectively punished members of the German and Hungarian community of then Czechoslovakia various ways. The Germans were expelled, as were many Hungarians. Those who could stay were stripped of their citizenship, immovable property, jobs, pensions, and many were deported for forced labour. These measures were applied indiscriminately to all Hungarians and Germans, without any individual wrongful acts on their part. (Those Hungarians and Germans who did commit acts against the state during the war were prosecuted individually, and not on the basis of the Beneš decrees. A few Hungarians and Germans were exempt from repressions if they could prove that they actively resisted the Nazi regime, for example by participating in the Slovak National Uprising.) The decrees were the manifestation of the principle of collective guilt, according to which the whole Hungarian and German community was guilty of opposing the Czechoslovak state, and therefore their individual guilt was derived from their membership in these ethnic communities.
2. The repressive measures were in force until 1948, the communist takeover. After that their application was discontinued, but the victims were never rehabilitated. They did not receive an apology, no compensation was paid to them, and their confiscated property was not returned.
3. The Beneš decrees have been criticized a number of times by the political representation of Hungarians in Slovakia, and also by representatives of the expelled Germans, and the states of Germany (Bavaria in particular), Austria, Hungary, and Liechtenstein, whose citizens were affected by them. The Slovak and the Czech governments have stated a number of times that the decrees are a mere historic relict, they are not in force anymore, and therefore they do not affect current legal relationships. The issue of the Beneš decrees' compatibility with international law came up during the EU accession of the Czech Republic, when it was examined by the European Commission. According to their report, the decrees were not in force anymore, they did not affect current legal relationship. Slovakia was not examined at the time.
4. In recent years, journalists have uncovered several stories where the Beneš decrees were in fact currently applied in Slovakia, but the issue did not catch international attention.<sup>1</sup> Then on 19 May 2020, the European Court of Human Rights in Strasbourg decided the case of *Bosits v. Slovakia* (Application no. 75041/17, **annex 1**), which came as a shock even to lawyers working in this area, because it confirmed that Slovakia continues to apply the Beneš decrees to strip owners of their land on the basis of collective guilt of the Hungarian community.
5. In *Bosits*, the applicant's grandfather was an owner of a plot of land (35 hectares of forest) in the municipality of Varadka, in northern Slovakia. Since he was of Hungarian ethnicity, in 1946 the state initiated a confiscation procedure on the basis of one of the Beneš decrees, Regulation No. 104/1945 of the Slovak National Council *on the confiscation and early distribution of agricultural land of Germans, Hungarians, and traitors and enemies of the Slovak nation*. However, the confiscation was never finalized, and the forest remained his property. In 2000,

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<sup>1</sup> <https://parameter.sk/rovat/regio/2013/09/20/benes-dekretumok-alapjan-ruhaztak-telkeket-pat-kozsegrol-foldosztasra>; <https://ma7.sk/kozelet/aktualis/pozsonyuspokin-is-tovabb-hatnak-a-benes-dekretumok>; <https://www.aktuality.sk/clanok/700460/pozemky-pod-dolezitou-cestou-komplikuju-dalsiu-vystavbu-padlo-aj-nove-trestne-oznamenie/>; <https://www.aktuality.sk/clanok/678509/na-pozemkoch-im-stavaju-obchvat-nedostali-ani-cent-stat-povazuje-parcely-za-svoje/>; <https://www.aktuality.sk/clanok/712827/obchvat-bratislavy-postavili-na-nevypenyh-pozemkoch-dialniciari-nevedia-ako-dalej/>.

the state reviewed the property titles, and it confirmed that the land belonged to Mr. Bosits's grandfather. Mr. Bosits then inherited this property in 2006, and he was properly registered as its owner.

6. However, in 2009, the state (the Slovak Forests, national company) initiated a lawsuit against him, arguing that the property belongs to the state. The state argued that since his grandfather was of Hungarian ethnicity, the land should have been confiscated from him in 1946. Courts of two instances rejected the state's claim, holding that although the state indeed wanted to confiscate the grandfather's property, it never did so, therefore he remained its owner, and the applicant was entitled to legitimately inherit the land. The decision became final on 6 September 2013.
7. A year later, on 4 September 2014, the Prosecutor General submitted an extraordinary appeal on points of law against the final decision, asking the Slovakian Supreme Court to quash the lower courts' decisions. The Supreme Court indeed did so on 29 September 2015 (see the decision, **annex 2**). It held that the state's authority requires that the land should be presumed to be confiscated from the applicant's grandfather, and thus consequently from the applicant. It remanded the case to the first instance court, with orders to confiscate the applicant's property.
8. This Supreme Court decision was challenged by the applicant before the European Court of Human Rights. The European Court found that the Prosecutor General's extraordinary appeal violated Mr. Bosits's right to a fair trial. It did not and could not comment on the issue of property confiscation itself, as that matter is still pending before the Slovak courts. The decision of the Slovak Supreme Court is, however, clear: the Supreme Court ordered the applicant's property to be confiscated on the basis of his grandfather's Hungarian ethnicity. This case thus showed that Slovak courts can and in fact do currently apply the principle of collective guilt retroactively, and confiscate land on the basis of ethnicity.
9. It later turned out that the Bosits case is by no means exceptional. The media is currently widely reporting on the case of plots of land in Podunajské Biskupice/Pozsonypüspöki, where highway D4 is being built.<sup>2</sup> An English article overviewing the whole problem was also published by Új Szó, the Hungarian-language daily in Slovakia.<sup>3</sup> The land under the highway became very expensive. Instead of buying it from the owners, or expropriating it with compensation, the state decided that since many of the owners are of Hungarian ethnicity, their land can be confiscated on the basis of the Beneš decrees. Podunajské Biskupice/Pozsonypüspöki, currently a suburb of the capital Bratislava/Pozsony, was indeed a Hungarian-inhabited village in 1945, where almost all land was owned by Hungarians and a few Germans. The state in 2018 initiated several court proceedings to confiscate the land under the highway from their current owners on the basis that it should have been confiscated from their ancestors in 1945-48 on the basis of their Hungarian ethnicity.
10. We asked the Ministry of Justice to clarify whether Regulation No. 104/1945 (the confiscation decree) is still in force. On 29 July 2020 they confirmed that it is, it was never repealed in Slovakia (see their email, **annex 3**).

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<sup>2</sup> <https://uj szo.com/kozelet/az-allam-a-benes-dekretumokra-hivatkozva-a-pusztanevrokonsag-alapjan-ma-is-koboz-el>; <https://domov.sme.sk/c/22434774/juraj-gyimesi-upozornil-na-konfiskaciu-majetku.html>; <https://uj szo.com/kozelet/erzi-a-szlovak-kormany-hogy-nem-lenne-elegans-a-benes-dekretumok-alapjan-elkobozni-a-d4-es>; <https://uj szo.com/kozelet/az-allam-egy-allitolagos-kitelepitesi-listara-hivatkozva-kobozna-el-foldeket>;

<sup>3</sup> <https://uj szo.com/benes-decrees-when-the-past-catches-up-with-the-present>.

11. To the best of our understanding, the current confiscations can be explained the following way. The state confiscated in principle all the land of Hungarian and German owners in 1945–48. For the confiscation to take effect, individual decisions had to be issued, confirming the person's Hungarian or German ethnicity. In many cases, the individual confiscation procedures were not finalized before 1948, when the state stopped the confiscations, and collectivized all property. Therefore, many Hungarians remained the owners of their property. This ownership was only nominal during communism, when the state managed all land as its owner. However, after 1989, property seized by the communist regime was restored to its original owners. Those Hungarians whose property was not confiscated by the Beneš decrees, got their property back. This was confirmed by the relevant state institutions, the old/new owners and/or their descendants were registered as owners on the property titles. The end result is that a lot of land is owned by Hungarians which could have been confiscated under the Beneš decrees in principle, but was never confiscated in practice.
12. This situation is abused by state bodies and private investors like. When some of the property becomes valuable, for example due to development, instead of buying it from the owners they resort to confiscate it by applying the Beneš decrees. This is not a historical problem, but a current one. These confiscations are taking place currently, and will do so in the future. And of course, there is a big difference between current times and 1945–48: international human rights law is currently in force and applies in Slovakia. The right to property is protected by the European Convention on Human Rights (Article 2 of Additional Protocol No. 1). Any confiscation on the basis of collective guilt, purely on the basis of ethnicity, is in breach of these international norms. The state cannot avoid responsibility simply by making the confiscations retroactive, or formally renaming them something else as confiscations.
13. The state's reaction to this issue was very disappointing. The Minister of Justice was asked by a Member of Parliament, journalists, and representatives of Hungarians in Slovakia, how the state will solve this situation. The Minister responded each time that the government will only implement the European Court's Bosits decision by reconsidering the Prosecutor General's competencies to submit an extraordinary appeal on points of law against final decisions, but will not take any action with regard to the confiscations (see the Minister's letter, **annex 4**). The Minister is right that the holding of the Bosits decision is limited to the issue of the right to a fair trial. However, she is completely ignoring the Slovakian Supreme Court's decision which led to the European Court's decision, and also the current court proceedings in Podunajské Biskupice/Pozsonypüspöki. The state is pretending that there is no issue until the European Court or some other international body indeed confirms that confiscations on the basis of collective guilt are indeed unacceptable in the EU in the 21<sup>st</sup> century. We are of the opinion that human rights problems are best solved before they lead to international condemnation. Therefore, we are very disappointed that the Ministry would not even consider discussing the issue with representatives of Hungarian civil society in Slovakia and establishing a committee to review the nature of the problem and the possible solutions.
14. The Minister added insult to injury by defending the Beneš decrees on the ground that even though mistakes were made during their implementation which affected individuals negatively, they were a legitimate part of settlement of World War II. This statement is very insulting to those harmed by the decrees and their descendants, because the whole point of the decrees was that they only affected innocent people. Those who were individually guilty of any anti-state acts were prosecuted individually, and not under the decrees. Therefore, harming the innocent was not a result of individual mistakes as the Minister would have it, but a design feature of the decrees: only those were persecuted under them whose individual guilt could not be established

otherwise. The Minister thus basically declared again Hungarians in Slovakia as a group guilty of further non-specified crimes which justify loss of citizenship, property, income, forced labour, and other repressions, of all, including small children. This is unacceptable.

15. We would like to note that, although the Beneš decrees are a main source of historical resentment for Hungarians in Slovakia, their representatives have left the issue rest for the last decade. The decrees were also not an issue on the advocacy list of the Roundtable of Hungarians in Slovakia. It was the state which upset the status quo by using the decrees to confiscate property anew. Those affected turned to courts, which confirmed what is in fact happening. In this situation, the least we would expect is for the state to engage in a dialogue about how the issue can be solved.

## **II. Article 3 – Citizenship**

16. The new Slovak government has announced how it will resolve the issue of citizenship. To recall, in 2010, Hungary changed its law to permit persons living abroad to apply for Hungarian citizenship (if they satisfy the general criteria for citizenship, e.g. they are descended from a Hungarian citizen). As a reaction, Slovakia changed its citizenship law in a way that anybody obtaining a second citizenship would lose its Slovak citizenship. More than 3 thousand persons have lost their citizenship since then, only a small minority of them due to acquiring Hungarian citizenship.
17. Even though the current government parties pledged during the 2020 parliamentary elections to revoke the restrictive citizenship act, the government's plan announced in June this year proposed a selective approach: the citizenship act would be amended in a way that Hungarians in Slovakia obtaining Hungarian citizenship would still lose their Slovak citizenship. There is no other group the restriction would apply to. We consider this approach discriminatory, which has no reasonable justification.

## **III. Article 3 – Census**

18. We note that preparations for the 2021 census have been finalized, yet there is still a lot of confusion about how ethnicity will be surveyed. The census will allow for selecting multiple ethnicities, but will differentiate between a “primary” ethnicity and other ethnicities. We do not know yet how the different categories will be handled legally, what legal consequences they will have. The laws taking ethnicity into account have not been amended. It is likely that only “primary ethnicity” will be considered an ethnicity for the purposes of legal regulation, for example on the use of minority languages.
19. Regrettably, the census will not survey what languages the population speaks (apart from their mother tongue and most spoken language), which is a crucial information for language policy and for making language rights effective and accessible.

## **IV. Article 10 – Birth certificates**

20. We would like to provide an update on the case concerning birth certificates which we reported on in our Comments on the Government's Fifth Report under the FCNM (para. 121). To recall, birth, marriage and death certificates are among the very few documents which the law explicitly mentions as to be issued bilingually. However, as we reported earlier, the certificates are only filled in in Slovak, in violation of the law. To our previous report we annexed a birth

certificate issued in Komárno/Komárom, which was printed on a bilingual form, but all the information in it was written in Slovak only (see Annex 5 of our previous Comments). The person asking for the form submitted a complaint arguing that her birth certificate filled in in Slovak only was not in compliance with Slovak law, the European Charter of Regional and Minority Languages, and the Framework Convention (see Annex 6 of our previous Comments). When she was refused, she initiated a lawsuit.

21. On 22 July 2020, the Nitra Regional Court delivered its decision in the case (see **Annex 5**). The court held that domestic law must be interpreted in line with the Framework Convention and the Language Charter. Consequently, a birth certificate filled in in Slovak only, violates the law. The court also found that the Komárno/Komárom municipal office issuing the form does not have a choice, they cannot fill in the certificate bilingually: it is in the competence of the Ministry of the Interior to modify the central electronic registration system in a way which allows for bilingual certificates to be issued. The Ministry of the Interior stated their position in the case according to which they have no intention to modify the central electronic registration system.
22. The decision is on the one hand a victory for legal purists: the supremacy of the Framework Convention and the Language Charter was confirmed, and the court confirmed that the applicant's language rights were violated. On the other hand, the decision cannot be enforced, not even in this specific case, let alone in general. It is only the Ministry of the Interior who could make the required steps, and the court has no power over them. The issue of bilingual certificates is thus still unresolved. No steps were taken by the state to ensure that bilingual certificates can be issued.

## **Annexes**

1. Bosits v. Slovakia, decision of the European Court of Human Rights.....	7
2. Decision of the Slovak Supreme Court in Slovak Forests v. Bostis.....	18
3. The Ministry of Justice's email confirming decree is in force.....	37
4. The Minister of Justice's letter on steps to implement Bosits v. Slovakia.....	39
5. Decision of the Nitra Regional Court on bilingual birth certificates.....	42