



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 299th meeting*

Held at the Palais des Nations, Geneva, on Wednesday, 2 October 2019, at 3 p.m.

Chair: Mr. Ayat

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* No summary record was issued for the 298th meeting.

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The meeting was called to order at 3.10 p.m.

Consideration of reports of States parties to the Convention (continued)

Initial report of Slovakia (CED/C/SVK/1, CED/C/SVK/Q/1 and CED/C/SVK/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Slovakia took places at the Committee table.*
2. **Mr. Podhorský** (Slovakia), introducing the initial report of Slovakia (CED/C/SVK/1), said that the Slovak Republic was a democratic country governed by the rule of law, whose human rights legislation was in conformity with international standards. All internationally ratified instruments were automatically incorporated into the Slovak legal system and took precedence over domestic law. The initial report of Slovakia had been prepared in cooperation with several institutions. While the information portal of the Ministry of Justice, Slov-lex, provided professionals and civil society with the opportunity to comment on proposed bills and reports, no comments from civil society or the National Centre for Human Rights had been received relating to the initial report to the Committee.
3. The crime of enforced disappearance had been introduced into the Criminal Code in 2011 and the definition had remained unchanged since then. The criminalization of enforced disappearance protected the right to life and the prohibition against torture, which were non-derogable rights. Therefore, obedience to orders, war or a state of emergency could not be evoked by alleged perpetrators to avoid criminal responsibility. Under the Criminal Code, any representative of the State, or person or group of persons acting in collusion with the State, who deprived a person of liberty in any way and refused to confirm the deprivation of liberty or concealed the whereabouts of that individual, thereby removing them from the protection of the law, was liable to a prison sentence of 7 to 12 years.
4. The crime of enforced disappearance was not, however, limited to the general definition set out in section 420 (a) of the Criminal Code. Superior officers were also criminally liable where they knowingly failed to prevent or report a crime which had been brought to their attention, thereby preventing the launch of legal proceedings. Under the Code of Criminal Procedure and other relevant legislation, statutory time limits guaranteed prompt starts to criminal proceedings and investigations into criminal offences. The independence of criminal proceedings was guaranteed by the exclusion of persons with any connection to the case and the suspension from their duties of law enforcement officers in cases where they were suspects, thus ensuring impartiality and preventing any interference in criminal proceedings. National legislation also set forth the obligation for law enforcement officers, prosecutors and members of the military to refuse to obey an order if such action would result in the commission of a criminal offence and to inform their superiors about the risk implied in carrying out such an order. Prosecutors were obliged to refuse to obey an order that contradicted their legal opinion. Thus, despite the hierarchical structures of law enforcement institutions, the independence of law enforcement officers was guaranteed by law. Moreover, any disciplinary measures imposed for refusal to carry out orders were subject to review by an appellate body.
5. Regarding the prohibition of secret detention pursuant to the Convention, even prior to the ratification of the Convention, Slovak legislation had introduced the requirement to register information on detainees. Since ratification, however, the criteria regarding the information that the Prison and Judicial Guard Corps were required to record had been defined more precisely. Pursuant to the Code of Criminal Procedure, if a person was detained by a police officer without an order from a prosecutor, such detention must be reported to a supervising prosecutor immediately, with information on the detainee and the grounds for detention. An application to take a person into custody must be submitted without delay to ensure the accused was brought before the court within 48 hours. Under the constitutional guarantees, no one could be subjected to a prison sentence or restriction of personal liberty without a valid court decision. Extradition requests were reviewed by the courts on a case-by-case basis. Where all conditions for extradition were met and all remedies against a court decision had been exhausted, the Minister of Justice took a

decision on whether to extradite or not. The Ministry of Foreign and European Affairs provided information on the situation of the country to which a person would be extradited.

6. Recent legislative developments included the adoption of Act No. 274/2017 on victims of crime, which established the provision of psychological and legal assistance for victims, tailored to their needs. The Code of Criminal Procedure set forth the obligation for police officers, prosecutors and judges to inform victims of the assistance available to them, their rights in criminal proceedings and channels for claiming compensation. Protection for child victims was strengthened through the provision of obligatory psychological support prior to questioning. In 2015, the Office of the Defender of Children's Rights had been set up as an independent monitoring body, providing enhanced protection relating to cross-border adoptions of children. In summary, national legislation prohibited unlawful detention and any denial of rights in detention, and guaranteed prompt and impartial investigations should the crime of enforced disappearance occur in the country. However, given the Government's lack of experience in dealing with crimes of enforced disappearance, of which there were no recorded instances in Slovakia, the Committee's recommendations regarding training for law enforcement bodies in that area would be welcome.

7. **Mr. Teraya** (Country Rapporteur) said that the fact that no comments had been submitted on the information portal of the Ministry of Justice, Slov-lex, during the preparation of the State party report raised questions about the effectiveness of the portal. He would be interested to know how many comments were usually submitted on the portal during the preparation of other treaty body reports. He wondered whether the 15-day period for collecting comments was sufficient and whether the authorities had adequately reached out to civil society and national human rights institutions. Were there any plans to convene meetings with civil society and national human rights institutions, or to invite stakeholders to submit comments on the portal, once the Committee had adopted its concluding observations?

8. He would appreciate some clarification on the budget and staffing increases for the National Centre for Human Rights, including information on whether those increases were part of the reform referred to in paragraph 3 of the replies to the list of issues. He would also like to know what action would be taken to ensure that the Centre complied with the principles relating to the status of national institutions for the promotion and protection of human rights.

9. He would like to know if enforced disappearance was prohibited even in times of war and whether a general limitation clause was in place under which enforced disappearance was permitted. Commending the definition of enforced disappearance as an autonomous crime in national law and welcoming the new translation of section 420 (a) of the Criminal Code provided in the replies to the list of issues, he nevertheless wondered whether the original Slovak text was so vague as to allow for various interpretations; he was not sure that the translation presented to the Committee demonstrated compliance with the Convention. Had comments been sought from academics and other legal bodies on the new translation? He wondered how it was ensured that domestic courts' interpretation of section 420 (a) was consistent and in line with the international interpretation.

10. Referring to paragraph 21 of the replies to the list of issues, he would like clarification on whether a soldier was obliged to obey an order issued by a military superior to commit a crime of enforced disappearance.

11. **Ms. Kolaković-Bojović** (Country Rapporteur) said that she would like to know how the legal and procedural guarantees relating to the right of persons deprived of their liberty to a prompt and impartial investigation into cases concerning them were implemented in practice. In its visit report of 2014, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had raised concerns that, in some police stations, the temporary detention of individuals in so-called "designated areas" was not always recorded in the custody register and the right of foreign nationals deprived of their liberty to contact a representative of their State was not always respected. She wondered what measures had been taken in response to those concerns and whether any incidents of that kind had occurred since 2014.

12. She would like clarification as to whether the law provided for the automatic suspension, for the duration of the investigation, of any State agent suspected of involvement in enforced disappearance. She would also like to know whether military courts had jurisdiction over the same offences as the military police, namely, those for which the penalty did not exceed 3 years' imprisonment. The State party had reported that, under section 481 of the Code of Criminal Procedure, it could refuse to cooperate with other States if such cooperation would violate the Constitution, any other legal provision or an important protected interest of Slovakia. It would be helpful if the delegation could explain the meaning and scope of that provision and its application in the context of requests for assistance in cases of enforced disappearance.

The meeting was suspended at 3.50 p.m. and resumed at 4.10 p.m.

13. **Mr. Filčík** (Slovakia) said that civil society organizations were given 15 days in which to submit comments on draft reports to human rights treaty bodies. However, the consultation process was announced several months in advance. All treaty body reports were also submitted to the Government Council for Human Rights, National Minorities and Gender Equity, which was composed of equal numbers of representatives of State authorities and representatives of non-governmental organizations (NGOs), the National Centre for Human Rights and the Public Defender of Rights. Unusually, the Government had received no suggestions or comments from civil society or the Council on the report that was before the Committee, most likely because it was an initial report, which meant that it contained a lot of basic information that was common knowledge in Slovakia, and because there were no NGOs that dealt specifically with the issue of enforced disappearance.

14. Although the bill on the reform of the National Centre for Human Rights had been rejected by parliament, the Centre had nonetheless seen its budget increase by 40 per cent and had recruited additional staff. The bill had been rejected because the Ministry of Justice had refused to take into account some of the amendments proposed by members of parliament which it had considered to be contrary to the Paris Principles. The bill would be tabled again after the general elections in 2020.

15. **Ms. Kročková** (Slovakia) said that the list of rights that could be restricted in times of war was an exhaustive, closed list. Any restriction of those rights must be in accordance with Act No. 227/2002 on State security in times of war, hostilities, exceptional circumstances or emergency. The Constitution alone could not be invoked as the basis for a restriction of those rights.

16. Translating legislation from Slovak into English was a challenge, owing to the structural differences between the two languages. The translation of section 420 (a) (1) of the Criminal Code that had been provided in paragraph 11 of her country's replies had been validated by lawyers. The wording of that section in Slovak was not vague or open to interpretation. In the event that a law had been interpreted differently by different courts, a claim could be filed with the Constitutional Court in order to settle the issue. The Constitutional Court, like all courts, was required to interpret national laws in accordance with the Constitution and binding international treaties such as the Convention. Her Government's interpretation of section 420 (a) (1) of the Criminal Code was shared by academics and supported by legal commentaries.

17. Soldiers were required by law to refuse to carry out any order that would result in the commission of an offence, regardless of whether the order had been issued verbally or in writing. There were no military courts in Slovakia; criminal cases involving soldiers were tried by the ordinary courts.

18. **Ms. Bierbaumer** (Slovakia) said that, since 2014, a number of orders and regulations had been issued by the Presidium of the Police Force in order to ensure compliance with the CPT recommendation regarding the registration of persons in police custody. Under those regulations, a person could be detained in a designated area only after his or her case had been properly assessed and only for the length of time that was strictly necessary, and all placements in detention had to be recorded using the relevant form or register. The various branches of the police force, such as the riot police and the border and foreigners police, were each subject to specific regulations on the matter. The Presidium of

the Police Force had instructed directors of police units and regional directors to ensure that cases in which the personal liability of police officers had been limited were immediately recorded on a spreadsheet, with the exception of the criminal investigation police, which followed a different practice in line with its internal rules.

19. **Ms. Kročková** (Slovakia) said that, under Slovak law, superior officers did not have the discretion to decide whether or not a subordinate officer should be suspended. The wording of the legislation in question made it quite clear that superior officers had a legal obligation to order the suspension. The suspension could not, however, be considered “automatic”, as it was the result of a decision taken by a hierarchical superior.

20. The language used in section 481 of the Code of Criminal Procedure, on the protection of the State’s interests in accepting requests by foreign authorities, was often included in international cooperation agreements and in public and private international law to afford the State the possibility of rejecting such requests if necessary. An extradition request from another State might well be refused if accepting it would prevent criminal proceedings from taking place in Slovakia. However, such cases were few and far between.

21. In Slovakia, once an international human rights treaty had been signed, legislation was prepared to assist the State in meeting the obligations flowing from it. Once that process was complete, the treaty was ratified. Section 420 (a) of the Criminal Code had been adopted in 2011 after Slovakia had signed the Convention but prior to its ratification to allow the necessary legislation to be prepared and to ensure compliance with the Convention during the intervening period.

22. **Mr. Teraya** said that the low number of comments on the State party’s initial report could perhaps be explained by the perception that there was no enforced disappearance in the country or by a lack of public awareness of the comments system. For the sake of comparison, he would be interested to know how many comments had been submitted on reports to other treaty bodies.

23. He encouraged the State party to continue its efforts to fully operationalize and ensure the effectiveness of the National Centre for Human Rights. While he understood that the Constitution of Slovakia prohibited the limitation of human rights in a general manner, to his mind, there was still a risk that enforced disappearance might occur if a general limitation clause was ever applied in the country.

24. Regrettably, the English translation of the definition of enforced disappearance contained in section 420 (a) remained unclear. Given the potential for the Slovak courts to make diverse interpretations of that provision, he asked how the State party ensured that they all adhered to the accepted international definition of enforced disappearance. In his view, the fact that Slovakia was a monist State was not in and of itself a guarantee that the international definition of enforced disappearance would be applied across the board. While he understood that subordinate officers were under no obligation to follow the orders of their superiors if doing so could lead to the commission of an offence of enforced disappearance, he would appreciate more information on the safeguards in place to prevent the commission of that offence in cases where subordinate officers misunderstood or failed to grasp the full consequences of such orders.

25. **Ms. Kolaković-Bojović** asked whether the State party was aware of any cases in which the right of persons deprived of their liberty to contact a representative of the State of which they were a national had been denied.

26. **Mr. de Frouville** said that, regrettably, enforced disappearance was not included in the list of offences appearing in section 5 (a) of the Criminal Code in respect of which universal jurisdiction could be established. It was his understanding, however, that a Slovak judge could establish jurisdiction over offences of enforced disappearance committed abroad by a foreign national on the basis of section 6 of the Criminal Code, provided that the dual criminality requirement set out therein was met and that the penalty imposed on the perpetrator in Slovakia did not exceed that prescribed by the criminal legislation of the State where the offence had been committed.

27. Making the establishment of universal jurisdiction subject to such conditions was problematic because, in the hypothetical situation where a person who had subjected a

foreign national to enforced disappearance abroad was arrested in Slovakia, a Slovak judge would only be able to establish universal jurisdiction over the offence on the basis of section 6 and, if it transpired that the criminal legislation of the State where the offence had taken place did not establish the crime of enforced disappearance but only related, less serious crimes, the Slovak judge would only be able to impose the more lenient penalty carried by those crimes in the other State. He asked whether the State party did not consider the conditions contained in section 6 of the Criminal Code as limiting its ability to establish universal jurisdiction over offences of enforced disappearance and to meet its obligations under the Convention.

28. **Mr. Filčík** (Slovakia) said that the number of comments received on reports to other treaty bodies varied depending on the subject. For example, a total of 29 comments had been received on the country's most recent report to the Committee against Torture while around 100 comments had been received on a past report to the Committee on the Elimination of Discrimination against Women.

29. While it was true that most countries had some sort of general clause limiting human rights, the Constitution of Slovakia specifically provided that, although human rights could be limited in times of war or during a state of emergency, such limitations must be provided for in law. Under the monist system, all international human rights treaties ratified by Slovakia became part of the domestic legal framework and were directly enforceable before the courts. Victims of enforced disappearance or their families could lodge a request for the protection of their human rights and fundamental freedoms with the Constitutional Court. All courts in Slovakia were obliged to respect the primacy of international human rights conventions over domestic legislation. According to the case law of the Constitutional Court, even the Constitution had to be interpreted in line with the international human rights conventions that the country had ratified.

30. When a subordinate officer was given an order by his or her superior that, if executed, would lead to the commission of the crime of enforced disappearance, he or she was obliged to disregard such an order. Failure to do so resulted in the subordinate officer becoming an accomplice to the enforced disappearance.

31. He was unaware of any cases in which the right of persons deprived of their liberty to contact a representative of the State of which they were a national had been denied or in which that right had been unreasonably restricted.

32. In the hypothetical situation described by Mr. de Frouville, the Slovak judge would not be forced to impose the more lenient penalty carried by a crime related to enforced disappearance in the other State, as the dual criminality requirement would not have been met. Section 6 of the Criminal Code provided that the offence in question must be a prosecutable crime in both Slovakia and the other country in order for universal jurisdiction to be established.

33. **Ms. Bojková** (Slovakia) said that persons deprived of their liberty, particularly children and persons belonging to other vulnerable groups, were provided with access to a lawyer from the outset of their detention and had the right to contact their family or any other person of their choice. Police officers were obliged to inform persons deprived of their liberty of their rights immediately after placing them in detention. Persons deprived of their liberty were entitled to choose a lawyer and to consult him or her in private during their time in detention. Lawyers had the right to be present during court hearings. If a person deprived of his or her liberty was subsequently accused of a crime, he or she could ask for his or her family or other persons to be informed, provided that doing so would not obstruct the related investigation. If the person in question was a minor, police officers were obliged to inform his or her legal representative, social worker or legal guardian without delay. Accused persons in detention had the right to make two telephone calls to the person of their choice for as long as their personal liberty was restricted, provided that doing so would not obstruct the criminal proceedings. In the case of foreign nationals, police officers were obliged to inform them of their rights, including the right to contact the consular authorities of the State of which they were a national. Foreign nationals had the right to communicate with consular authorities, to request a visit by a consular officer and to request legal representation through those authorities.

34. **Mr. de Frouville** said that, if he had understood correctly, the condition that the penalty imposed on the perpetrator in Slovakia should not exceed that prescribed by the criminal legislation of the State where the offence had been committed would not apply as the Slovak judge would be unable to establish jurisdiction over an offence of enforced disappearance committed abroad if the dual criminality requirement was not met. Given that enforced disappearance had yet to be criminalized in many countries, the omission of that phenomenon from the list of offences appearing in section 5 (a) of the Criminal Code effectively rendered the system of universal jurisdiction required by the Convention inoperable. He urged the State party to consider correcting that oversight.

The meeting rose at 5 p.m.