



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Report submitted by Slovakia under article 29 (1)
of the Convention, due in 2017***

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I. Introduction

1. The Convention for the Protection of All Persons from Enforced Disappearance (the “Convention”) was adopted by the General Assembly of the United Nations on 20 December 2006 in New York. On behalf of the Slovak Republic it was signed on 26. September 2007. Ratification notice was deposited on 15. December 2014. The Convention, came into force on 23. December 2010 pursuant to its article 39 (1) and in relation to Slovak Republic on 14 January 2015 pursuant to its art. 39 (2) the Convention was published in the Collection of Laws (Coll) under the No. 12/2015.
2. By ratifying the Convention, the Slovak Republic undertook the obligation of implementing the Convention through its national legislation and to take measures to prevent and punish enforced disappearances. At the time of deposit of instruments of ratification the Slovak Republic also recognised the competences of the Committee on Enforced Disappearances granted by provisions of Art. 31 and 32 of the Convention to receive and consider communications from or on behalf of individuals under its jurisdiction, the competence of the Committee to receive and consider communications in which a State party claims that another State party to the Convention is not fulfilling its obligations. The inquiry procedure including visits conducted by members of the Committee under Art. 33 of the Convention has also been accepted.
3. In accordance with article 29 of the Convention, the Slovak Republic has undertaken the obligation to submit to the Committee on Enforced Disappearances, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under the Convention.
4. This initial report on the implementation of the Convention has been prepared by the Ministry of Justice of the Slovak Republic (the “Ministry of Justice”) in cooperation with the Ministry of Foreign and European Affairs of the Slovak Republic, the Ministry of Interior of the Slovak Republic, Prison Guards Corps, Ministry of Defence of the Slovak Republic, Office of General Public Prosecution of the Slovak Republic, Ministry of Health of the Slovak Republic, Centre for the International Protection of Children — as national contact point under The Hague Conventions on International Civil and Family Law including The Hague Convention on Civil Aspects on International Child Abduction, and the Institute for the Memory of Nation that holds archives on crimes committed by authoritarian regimes on the territory of the Slovak Republic between 1939 and 1989.
5. The report has been prepared in accordance with the guidelines on the form and content, contained in the document CED/C/2.

II. General legal framework under which enforced disappearances are prohibited

6. The Slovak Republic as a successor state of former Czechoslovakia is counted among establishing member states of the United Nations Organisation, it is a member of the Council of Europe and the European Union, the North Atlantic Treaty Organisation (NATO), Organisation for Security and Cooperation in Europe (OSCE), Organisation for Economic Cooperation and Development (OECD) and other international organisations, as well as state party to core international human rights treaties, including: the International Covenant on Civil and Political Rights, together with the First and Second Optional Protocols on individual communication procedure, and the abolition of death penalty; the International Covenant on Economic, Social and Cultural Rights, with the Optional Protocol; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, yet without the ratification of the Optional Protocol recognising the mandate of the Sub-committee on Prevention and providing for building of a National Preventive Mechanism; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities, with all respective protocols; Convention on the Prevention and

Punishment of the Crime of Genocide; the Four Geneva Conventions of 1949, with two Additional Protocols of 1977; 1951 Convention and 1967 Protocol Relating to the Status of Refugees; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968; the Rome Statute of the International Criminal Court; Convention against Transnational Organized Crime with the (Palermo) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; all core, and in total sixty-nine ILO Conventions, including Conventions No. 29 and 105 on Abolition of Forced Labour.

7. Since its foundation in 1993, after the peaceful dissolution of former Czech and Slovak Federative Republic, the Slovak Republic cooperates with the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) in the field of protection of human and minority rights and the rule of law. It has ratified a number of Council of Europe human rights conventions, including the most significant one — the European Convention for the Protection of Human Rights and Fundamental Freedoms; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, with the First and Second Protocol; the Council of Europe Convention on Action against Trafficking in Human Beings; Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, with Additional Protocol; Framework Convention for the Protection of National Minorities and the European Social Charter.

8. According to Art. 1 (2) of the Law No. 460/1992 Coll. the Constitution of the Slovak Republic (the Constitution), the Slovak Republic recognises and honors general rules of international law, international treaties by which it is bound and its other international obligations. Pursuant to Art. 7 (5) and 154c of the Constitution, international treaties on human rights and fundamental freedoms, international treaties which execution does not require adoption of a law (self-executing treaties) and international treaties which directly establish rights or obligations of natural or legal persons and which were ratified and promulgated in a manner laid down by law, shall have primacy over the national laws, including when they provide greater scope of constitutional rights and freedoms.

9. As for the accountability of the state power towards its citizens, the Constitution as core legal document of a sovereign and democratic state governed by the rule of law, recognises that state power originates from citizens, who exercise it through their elected representatives or directly, and guarantees that state authorities may act only on the basis of the Constitution, within its limits, to the extent and in a manner which shall be laid down by law (Art. 2 (2) of the Constitution).

10. Chapter II. of the Constitution — dedicated to fundamental rights and freedoms further reiterates that people are free and equal in dignity and in rights and human rights and freedoms are inviolable, inalienable, imprescriptible, and indefeasible. They are guaranteed to everyone on the territory of the Slovak republic regardless of sex, race, color of skin, language, faith and religion, political or other thoughts, national, social or ethnic origin or affiliation, property, descent and any other status (Art. 12 of the Constitution).

11. Duties may be imposed by law, within its limits, and while complying with basic rights and freedoms or by international treaty which directly establishes rights and obligations of natural or legal persons. Any limitation to rights and freedoms may only be determined by law, while legal restrictions must apply equally to all cases which meet the prescribed conditions, and ultimate attention must be paid to their essence and meaning. Such restrictions shall reflect the principles of necessity and proportionality and may only be used for the prescribed purpose (Art. 13 of the Constitution).

12. Pursuant to Art. 15 and 16 of the Constitution, extensive protection of human life, the inviolability of the person and her privacy as well as absolute prohibition of torture or other cruel, inhuman, or humiliating treatment or punishment is guaranteed.

13. Further protection of personal freedom is elaborated in the Art. 17 of the Constitution, stating that no one may be prosecuted or deprived of freedom other than for reasons and in a manner determined by law. No one may be deprived of freedom solely because of his inability to fulfil a contractual obligation. A person accused or suspected of a

criminal act may be detained only in cases laid down by law. The detained person must be immediately informed of the reasons of his detention, provided opportunity to be heard and within 48 hours either released or handed over to the court. The judge must hear the detained and consequently decide on his custody or release within 48 hours, and in particularly serious crimes within 72 hours from restriction of his personal freedom. The same rules apply to the accused, who too may be arrested only on the basis of a written, substantiated order of a judge. The arrested person must be handed over to the court within 24 hours. The judge must hear the arrested person and decide on custody or release within 48 hours and in particularly serious crimes within 72 hours from the detention.

14. A person may be taken into custody only for reasons and for a period specified by law and on the basis of a court ruling. Analogically, strict rules specified by law must apply to admittance and placement in institutional health care without the consent of the concerned person. Such measure must be reported within 24 hours to the court which has to decide within five days.

15. The mental state of a person accused of a criminal act may also be examined only on the basis of a written court order.

16. In addition to prohibition of forced labor or services (Art. 18 of the Constitution), constitutional protection of human dignity, personal honor, reputation and good name, including unauthorized interference in private and family life and unauthorized collection, publication or other misuse of personal data (Art. 19 of the Constitution), inviolability of one's home and protection from unwanted entry without the resident's consent (Art. 21 of the Constitution) is also guaranteed. A house search is admissible only in connection with criminal proceedings and only on the basis of a written and substantiated order of the judge. The method of carrying out a house search is specified by law. Other infringements upon the inviolability of one's home may be permitted by law only if it is necessary in a democratic society in order to protect human life, health or property, to protect the rights and freedoms of others, or to prevent a serious threat to public order. If the home as private residence is used also for business or other economic purposes, such infringements may be permitted under the same strict conditions prescribed by law to discharge the necessary tasks of public administration. The privacy of letters, messages, written documents and the protection of personal data is guaranteed by provisions of Art. 22 of the Constitution.

17. Freedom of movement expressed in Art. 23 of the Constitution provides for everyone who is legally staying on the territory of the Slovak Republic protection of personal security and integrity, as well as the right to freely leave the territory of the Slovak Republic. Freedom of movement may be restricted by law, if it is necessary for the security of the state, to maintain public order, protect the health and the rights and freedoms of others, and, in designated areas, also in the interest of environmental protection. Citizens of Slovakia have the right to freely enter the territory of the Slovak Republic and may not be forced to leave the homeland, neither be deported.

18. Foreign nationals suffering from persecution for reasons of race, religion, nationality, political rights and freedoms or for a reason of belonging to a particular social group, have the right to apply for asylum (Art. 53 of the Constitution). Further details are laid down by the Asylum Act No. 480/2002 Coll. and the Act on Residence of Foreigners No. 404/2011 Coll.

19. The list of constitutional rights continues with the freedom of thought, conscience, religion and faith (Art. 24 of the Constitution), the freedom of speech and the right to information (Art. 26 of the Constitution), the right of petition, the right to peaceful assembly and the right to associate through establishment of political parties and movements, clubs, societies, civil organisations and other associations that are separate from state (Arts. 27, 28 and 29 of the Constitution). Conditions for exercising these rights are set by law, including possibility of restriction, if necessary to protect the rights and freedoms of others, public order, health and morals, property, or the security of the state. However, an assembly may not be conditioned by the issuance of an authorization.

20. Citizens also have the right to participate in the administration of public affairs either directly or through the free election of their representatives. Citizens have access to elected and other public posts under equal conditions. Any legal regulation of political

rights and freedoms and their interpretation and use must protect and enable free competition of political forces in a democratic society (Art. 31 of the Constitution). Should this not be the case, citizens have the right to put up resistance against anyone who would eliminate the democratic order of fundamental rights and freedoms listed in the Constitution, if the activity of constitutional bodies and the effective use of legal means are rendered impossible (Art. 32 of the Constitution).

21. The system of checks and balances and judicial oversight of human rights is materialised in the right to judicial and other legal protection enshrined in the Art. 46 of the Constitution ensuring that everyone may claim his or her right in a manner determined by law in an independent and impartial court. Anyone who claims to have been deprived of his rights by a decision of a public administration body may turn to the court to have the legality of such decision re-examined. The re-examination of decisions concerning fundamental rights and freedoms may not be excluded from authority of the court.

22. In case of unlawful decision by a court or another state or public administration authority, everyone is entitled to compensation for the incurred damage. Conditions and details concerning judicial and other legal protection shall be determined by law.

23. In addition to system of regular courts, appeal courts and the Supreme Court of the Slovak Republic, the Slovak Republic also has the Constitutional Court of the Slovak Republic (the Constitutional Court) as independent judicial body in charge of protection of constitutionality. According to Art. 127 of the Constitution, the Constitutional Court also decides on complaints of physical or legal persons claiming violation of their fundamental rights and freedoms, or the rights and freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner determined by law. If the Constitutional Court satisfies the complaint, it will state in its decision that a court decision, measure, or other official act violated the rights or freedoms and it shall annul such decision, measure, or other act. If the violation of rights or freedoms has arisen due to inactivity, the Constitutional Court may order to person or official entity that violated these rights or freedoms, to act in legally determined and fair matter. The Constitutional Court may at the same time return the case for further proceeding, prohibit further violation of human rights, or rights ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner determined by law or, if possible, order the subject that has violated the rights or freedoms, to restore the state before the violation. The Constitutional Court may, by its decision on satisfaction of the complaint, award an appropriate financial compensation to the person whose rights were violated. Liability of the person that violated the rights or freedoms for damage or other harm, is not affected by the decision of the Constitutional Court.

24. In addition to courts, it is also the Prosecutor's Office of the Slovak Republic that protects rights and legally protected interests of natural and legal persons and the state. Its role and functions are regulated in the Art. 149 and the following of the Constitution and further elaborated in the Public Prosecution Act No. 153 / 2001 Coll.

25. As of 2002, the Office of Public Defender of Rights also known as Office of Ombuds(wo)man was established, by constitutional provision of Art. 151a and the Act No. 564/2001 Coll. on Public Defender of Rights, substantially amended in 2006.

26. The Public Defender of Rights is an independent body of the Slovak Republic which protects fundamental rights and freedoms of natural and legal persons in proceedings before public administration and other bodies of public authority, if their conduct, decision-making or inaction is in conflict with the constitutional or legal order. In cases of human rights violation, the Public Defender of Rights may participate in holding the respective persons and entities that represent public administration, accountable. Bodies and institutions representing public authority shall be to Public Defender of Rights of necessary assistance. In cases of generally binding regulation violating human rights or freedoms, Public Defender of Rights may file a motion with the Constitutional Court, to initiate proceeding pursuant to Article 125 of the Constitution.

27. As already mentioned, the relationship between domestic, national law and the body of International Human Rights Law, is the one of monism, when Article 7 (5) and 154 c of the Constitution provide that international treaties on human rights and fundamental

freedoms, international treaties, implementation of which does not require an act of law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law, take precedence over national legislation and enjoy direct effect when their provisions differ from the national legislation. This provision not only ensures equal, if not higher, legal effect of international treaties by making them part of the national legal system including the proceedings and decision making of the Constitutional Court, it also requires that national legislation is brought into line with international human rights obligations.

28. The Code of Criminal Procedure No. 301/2005 Coll. represents the framework for procedural guarantees in criminal proceedings. These include, as enlisted in the Art. 2 of the Code of Criminal Procedure, that no person may be prosecuted as accused on other than the legal grounds. Fundamental rights and freedoms of persons may be, in cases permitted by law, interfered with to the extent necessary to achieve the purpose of criminal proceedings with due respect to the integrity and dignity of persons as well as their privacy. Any interference with fundamental rights and freedoms before the commencement of the criminal prosecution or in pre-trial proceedings must be considered and allowed by judge for pre-trial proceedings. Any person subject to criminal prosecution shall be presumed innocent until proven guilty by a final sentencing judgment.

29. The state is represented in criminal proceedings by a public prosecutor who has a duty to prosecute all criminal offences that came to his knowledge. The bodies involved in criminal proceedings and the courts shall act *ex officio*. They have the duty to deal with the cases involving detention as a matter of priority and without undue delay.

30. Every person in criminal procedure has the right to a fair hearing of his criminal case by an independent and impartial tribunal in reasonable time and in his or her presence, and to have an opportunity to comment on any adduced evidence. Every person subject to criminal prosecution has the right to defence.

31. The bodies involved in criminal proceedings shall proceed so as to properly establish the facts of the case that do not give rise to reasonable doubts, to the extent necessary for making the decision. They shall procure the evidence as part of their official duties, respecting one of the fundamental rules of criminal investigation — which is the absolute prohibition of use of threat or violence against the suspect, defendant or other participants of the proceedings. This includes extracting confession through coercion, torture or other forms of inhuman or degrading treatment, as no such evidence may ever be used in the proceedings, nor may a court decision be based on evidence obtained through violation of human rights.

32. The parties may also, as a matter of right, procure the evidence. The bodies involved in criminal proceedings shall thoroughly clarify the circumstances regardless of whether they prejudice or benefit the accused and shall take the evidence in either direction so as to enable the court to come to a justified and fair decision. The court may also take other evidence than the one proposed by the parties, while the parties have the right to supply the evidence proposed by them. Authorities involved in criminal proceedings and the court shall evaluate the legally obtained evidence in accordance with their deep conviction based on the careful examination of all the facts of the case, separately and jointly, irrespective of whether they were supplied by the court, the bodies involved in criminal proceedings or by one of the parties to the proceedings.

33. All parties shall have equal status before the court. Authorities involved in criminal proceedings shall co-operate with associations of citizens and shall make use of the educational impact thereof.

34. Criminal prosecution before the court shall only be initiated on the basis of a motion or an indictment filed by a public prosecutor who shall represent the prosecution or the motion in the proceedings before the court.

35. In criminal proceedings before the court, the decision shall be made by a panel of judges, a single judge or by a judge for pre-trial proceedings. A presiding judge of a panel, a single judge or a judge for pre-trial proceedings shall have the sole authority to decide the case only when the law expressly provides for it.

36. Criminal cases shall be heard in open court. Public attendance may be excluded from the main hearing or open court hearing only in cases explicitly provided for. The judgment shall always be announced in open court.

37. Proceedings before the court shall be oral. The examination of evidence shall be carried out by the court which, however, leaves the examination to the accused, witnesses and expert witnesses to the parties, starting with the one that proposed or procured the evidence.

38. If the accused, his or her legal guardian, the victim or an injured party, a participating person or witness declares that s/he does not speak the language of the proceedings, s/he has the right to be assigned an interpreter or a translator.

39. The Criminal Code No. 300/2005 Coll. enlists the body of crimes against personal freedom in its Sections 182 and 183 concerning deprivation and restriction of personal freedom, restriction of freedom of residence (184 the Criminal Code), taking a hostage (185 the Criminal Code), abduction for ransom (186 the Criminal Code), abduction and enforced transfer to a foreign country (187 the Criminal Code), extortion (189 the Criminal Code), gross coercion (190 the Criminal Code), battery or abuse of a close person or person entrusted in one's care (208 the Criminal Code) and kidnap (209 and 210 the Criminal Code). Specific Chapter XII. of the Criminal Code deals with the Criminal Offences against Peace and Humanity, and Criminal Offences of Terrorism and Extremism, including genocide (Section 418 the Criminal Code), torture and other cruel or degrading treatment (420 the Criminal Code), various crimes of extremism (421–424 the Criminal Code), crimes against humanity or brutality (425 the Criminal Code), and as of 1 September 2011 also a crime of enforced disappearance that was listed under Section 420a of the Criminal Code. These crimes are generally considered to be of the utmost gravity and provide for imposition of the strictest penalties.

40. The procedure with regard to enforcement of the sentence of imprisonment pursuant to the Imprisonment Act No. 475/2005 Coll. and the role of the prison corps, regulated by Act No. 4/2001 Coll. on Prison Corps prescribe that offenders may be subjected only to such restrictions or forfeitures of rights and only to such extent that reflect nature and substance of the sanction, and in a manner that ensures respect for personality and human dignity of the offender. Prohibited treatments are primarily those treatments that are disproportionate to the purpose of maintaining order and discipline within a prison unit, or are unlawful and as such lead to inappropriate restrictions of human rights or any form of suffering.

41. Any form of discrimination in imposing or exercising the criminal sentence, including imprisonment, is also prohibited, which means that sentenced persons may not be treated unequally on the basis of their race, skin colour, political or other conviction, national or social origin, property, birth, education, social position or other status. Coercive measures may be applied according to principles of proportionality and necessity, strictly in a manner prescribed by law.

42. Employment of means of physical coercion such as isolation or usage of firearms and rubber bat, is only possible in cases of prevention of fleeing, physical attack against an officer or another sentenced person, infliction of self-injury or injuries to others, material damage, or prevention of violent resistance against lawful order of an officer or other representative of public authority.

43. According to Act No. 171 / 1993 Coll. on Police Force (the "Police Force Act"), the primary role of the police force is to create atmosphere of security, while fundamental rights and freedoms and the rule of law shall be guaranteed. In performance of their tasks, police officers may use only such measures and means of coercion that are prescribed by law and provide for achieving the aim with the least harmful consequences. Police officers must act in accordance with the Constitution, ratified international treaties and other legal acts. They must observe the standards of police conduct, in particular those that stem from international obligations stressing their primary duty to serve people, respect law and suppress illegal activities, provide assistance and due respect to victims of crime and vulnerable persons, observe principles of non-discrimination, confidentiality,

professionalism, resistance to unlawful orders, corruption and prohibited means of operation, especially those that may remind or represent torture, inhuman and degrading treatment.

44. Collected statistical data on cases of enforced disappearance in Slovakia prove that as of introduction of this type of crime into the Criminal Code from 1 September 2011 as well as within the *ratione temporis* of the Convention, i.e. as of 14 January 2015 when the Convention came into force in relation to Slovakia, till the time of final revision of this report in December 2017, no crime of enforced disappearance within the meaning of Section 420a of the Criminal Code and/or of the Convention has been attempted, committed, reported or investigated.

III. Implementation of each substantive article of the Convention

Article 1

Prohibition of enforced disappearance

45. Constitutional and other legal guarantees, in combination with the criminality of acts violating physical security and integrity of a person, to which the crime of enforced disappearance has been listed from 1 September 2011 in Section 420a of the Criminal Code, represent a clear and firm standard set in respect to Art. 1 (1) of the Convention, due to which “no one shall be subjected to enforced disappearance”.

46. Guaranteed human rights and freedoms may only be restricted by law, within the limits prescribed by the Constitution and to such an extent as is necessary to meet the purpose for which the restriction is allowed in an open and democratic society. Restrictions may be applied only in time of war, war state, exceptional state or emergency. No restrictions may apply to non-derogable rights as defined by international human rights standards: the right to life and physical integrity of a person, including absolute prohibition of death penalty, torture, inhuman or degrading treatment or punishment, slavery, servitude, and discrimination.

47. Respecting both the philosophy and content of the above list of non-derogable rights, the non-derogable nature of the crime of enforced disappearance, as fundamental precondition of protection of personal integrity and liberty, as well as fundamental principle of legality or protection from arbitrariness, can be drawn by analogy.

48. Pursuant to Art. 17 of the Constitution, deprivation of liberty is allowed only for reasons and in accordance with the procedure prescribed by law, whereas any unlawful deprivation of liberty sets criminal responsibility, regardless whether imposed and committed as a matter of order, or on behalf, or with the official or tacit support of any public authority or figure.

49. As the Criminal Code stipulates — detention, imprisonment or abduction of persons followed by a refusal to acknowledge these acts in order to eliminate criminal responsibility or to deny legal protection, constitutes a grave offence enlisted in Chapter XII. of the Criminal Code among crimes against humanity and other values protected under international law. An order to commit, or direct commission of illegal deprivation of liberty and imprisonment during the time of war, armed conflict or occupation constitutes a war crime against civilian population established by Section 432 of the Criminal Code. In addition, a broadly drafted Section 433 Criminal Code defining “lawlessness in the wartime” warrants that any acts substantially fulfilling the criteria of a war crime under Article 8 of the Rome Statute of the International Criminal Court, shall be punishable by strictest penalties of twelve to twenty-five years, or even life-imprisonment.

50. On a factual level, since its existence of 1 January 1993, the Slovak Republic has not experienced a threat or state of war, political instability or other public emergency that would require a derogation of constitutional and human rights. Should such situation ever arise, the Constitutional provision of Art. 32 defining *ius resistendi* of the inhabitants against anyone who would eliminate the democratic order of human rights and freedoms listed in the Constitution, if the activity of constitutional bodies and the effective use of legal means are rendered impossible, may be the ultimate guarantee against any such

harmful and abusive state or political power that would resort to acts of enforced disappearance.

Article 2

Definition of enforced disappearance

51. Pursuant to Article 7 (5) of the Constitution, the definition of enforced disappearance contained in the Convention has become an integral part of national legislation following ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. The provisions of the Convention take precedence over national legislation and apply directly where they may differ or provide for more rights than the provisions of national legislation.

52. In addition, the actual diction of Section 420 a (1) of the Criminal Code incorporates all relevant elements of the definition, and fully coincides with the definition of enforced disappearance as enshrined in the Convention, in its following verbatim transcription:

“Anyone who — as a representative of the state, or a person or a member of a group acting on behalf, with the support, or tacit agreement of the state — subjects anyone to arrest, detention, abduction or any other form of deprivation of personal liberty, consequently refuses to acknowledge the deprivation of liberty or conceals the whereabouts of the victim, in order to place the disappeared person outside the protection of law, shall be punished by seven to twelve years of imprisonment.”

53. Section 420a of the Criminal Code covering the crime of enforced disappearance, further includes paragraphs 2, 3 and 4, dealing with criminal responsibility of the superiors (Section 420 a (2) of the Criminal Code), enforced disappearance or removal of children (Section 420 a (3) of the Criminal Code) and enforced disappearance committed on vulnerable person, or causing a serious bodily harm or death (Section 420 a (4) of the Criminal Code). Given that these provisions represent implementation of the following Articles of the Convention, their content, legal interpretation and application are elaborated in parts of this report dedicated to obligations under the corresponding Articles 6, 7 and 25.

Article 3

Investigation

54. Article 3 of the Convention, relating to investigation of acts of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the state, and obligation to bring perpetrators to justice, corresponds to criminal acts defined in the Criminal Code as Offences against Personal Liberty that include or may account to human trafficking (Section 179 of the Criminal Code), trafficking of children (Section 180 of the Criminal Code), deprivation and restriction of personal liberty (Sections 182 and 183 of the Criminal Code), restriction of freedom of residence (Section 184 of the Criminal Code), taking a hostage (Section 185 of the Criminal Code), abduction or kidnap for ransom (Section 186 of the Criminal Code), abduction and enforced transfer to a foreign country (Section 187 of the Criminal Code), extortion (Section 189 of the Criminal Code), coercion (Section 190 of the Criminal Code) and kidnap of a vulnerable person or a child entrusted to one’s care (Section 209 and 210 of the Criminal Code). Acts that may qualify as crime of torture, inhuman or degrading treatment, listed in Section 420 of the Criminal Code, under Criminal Offences against Peace and Humanity and Criminal Offences of Terrorism and Extremism, may also form an integral part of acts defined in the Art. 2 of the Convention, regardless whether committed with or without authorization of the state. Brutality (Section 425 of the Criminal Code) as any act against civilian population that is deemed to be a crime against humanity under Article 7 of the Rome Statute of the International Criminal Court, is followed by war crimes, that incorporate crimes similar to, or identical with the crime of enforced disappearance, committed during wartime.

55. Prosecution of all the above and other criminal offences is an *ex officio* responsibility of the Public Prosecution as independent state authority entrusted with

protection of rights and legal interests of physical and legal persons and the state. Pursuant to Section 3 of the Public Prosecution Act, it has the power and competence to define and take measures aimed at detection and investigation of criminal and other offences and, in cooperation with other state authorities — especially the courts, to bring perpetrators to justice.

56. The process of detection and investigation of criminal offences as such is regulated by provisions of the Code of Criminal Procedure, which among other, in its Section 196, stipulates that criminal complaints shall be filed with a prosecutor or a police officer.

57. Police competence, role and tasks are set out in the Police Force Act, and except of protection of citizens, and rights and freedoms guaranteed by the Constitution — include prevention and detection of criminal offences and misdemeanours, tracking down perpetrators of criminal offences and bringing them before competent state authorities, provision of conditions for custody and detention of persons and other relevant tasks provided for by law.

58. In their substance and nature, measures of investigation of acts that fall into definition of Art. 2 of the Convention would not differ from standard measures of investigation. Due to the fact that since the introduction of crime of enforced disappearance into the legal system of the Slovak Republic, no such crime has been identified, investigated or proved to have taken place, and no such need has arisen, no specific measures nor methods of investigation of this type of crime have been introduced.

Article 4

Establishing the criminal offence in national legislation

59. The concept and definition of crime of enforced disappearance has been introduced into the Criminal Code under section 420a, by amendment through Act No. 262/2011 Coll., that came into force on 1 September 2011. System-wise, enforced disappearance was enlisted into the XII. Chapter of the specialised part of the Criminal Code, among the most serious crimes against peace and humanity, terrorism, extremism and war crimes. By this, the criminality of enforced disappearance — as clear and legislatively codified constitution of an offence under the criminal law of the Slovak Republic, has been established.

60. As already mentioned, since the introduction of crime of enforced disappearance into the legal system of the Slovak Republic as well as from 2015 when the Convention came into force in relation to Slovakia, till time of final revision of this report — i.e. the end of 2017, no crime of enforced disappearance pursuant to Art. 420a of the Criminal Code and Art. 2 of the Convention has been identified, investigated or proved to have taken place. Between 2011 and 2016, five crimes of restriction of personal liberty committed by public official as defined in section 183 (2) c of the Criminal Code, have been committed. None of them, however, fulfilled the objective definition, neither concern action defined by paragraph 420a of the Criminal Code and/or that of Art. 2 of the Convention that would qualify as crime of enforced disappearance.

Article 5

Crimes against humanity

61. As mentioned elsewhere, given that the Slovak Republic has the monist constitutional system with prevalence of international law — i.e. by way of Article 7 (5) of the Constitution granting precedence to international human rights treaties over national legislation and their direct applicability in case their provisions differ from the provisions of national legislation, with ratification of the Convention as well as the Rome Statute of the International Criminal Court, the Slovak Republic must perceive acts enforced disappearance committed in manner, or as part of widespread or systemic violation of human rights, as crime against humanity both under national and international law, with corresponding consequences.

62. In addition to direct applicability of Art. 5 of the Convention and Art. 7 (1) (i) of the Rome Statute of the International Criminal Court that lists enforced disappearance among crimes against humanity, the Criminal Code listed criminal offence of enforced disappearance in its Chapter XII — within body of criminal offences against peace, humanity and other values protected under international law. The criminal offence of a crime against humanity is committed by everyone who in violation of basic principles of international law, as part of a widespread or systematic attack against the civilian population orders imprisonment or abduction of persons without acknowledging these acts in order to deny them legal protection. These are by definition crimes of utmost gravity, requiring the highest level of attention and corresponding obligations in the sphere of legislation design, investigation, registration and criminal liability in relation to active commission, participation in, or passive tolerance of any such acts.

63. Chapter XII of the Criminal Code further incorporates, or directly cross-references the provisions of Articles 7 and 8 of the Rome Statute of the International Criminal Court to cover also war crimes — namely in Section 433 relating to lawlessness in the wartime — within which arbitrary occurrence or strategic usage of enforced disappearance may be also present. Liability for this type of crime oscillates from twelve to twenty-five years, or even life imprisonment.

64. It can therefore be concluded that the system of criminal law in the Slovak Republic establishes criminal offence of enforced disappearance as crime against humanity in the same substantive terms as diction of Article 5 of the Convention.

Article 6

Criminal responsibility

65. The criteria of incrimination of the superiors or persons in command set forth in the Art. 6 of the Convention have been in the legal context of the Slovak Republic satisfied by extensive and full transposition of crime of enforced disappearance into Section 420a of the Criminal Code, with specific provisions of paragraph 2 of the instant Section — in the following diction:

“Equal criminal responsibility and punishment (as for the crime of enforced disappearance, defined in paragraph 1) shall apply to a superior who

(a) knew or had information indicating that subordinates under his authority, command or control committed or intended to commit the crime of enforced disappearance

(b) exercised effective responsibility for and control over activities concerning the crime of enforced disappearance

(c) failed to take all necessary and adequate measures within his power to prevent or repress the criminal act of enforced disappearance, or failed to inform the competent authorities of investigation and criminal prosecution of a commission of such crime.”

66. In addition, the provisions of Section 420a of the Criminal Code can be read in combination with other general provisions of Criminal Code — *in concreto* Section 13 of the Criminal Code on preparation of a crime, which includes organisation of a criminal act, procurement or adaptation of means or instruments for its commission, associating, grouping, instigating, contracting, abetting or aiding, or other deliberate actions designed to create conditions for its commission. The following Section 14 of the Criminal Code concerns attempt — as action directly leading to the completion of a criminal offence performed by an offender with intent to commit a criminal offence, which has not been completed. The attempted criminal offence shall carry the same punishment as the completed criminal offence.

67. Criminal responsibility of superiors who would be aware of crime of enforced disappearance, or would fail to take measures to prevent or repress it, according to provisions of Art. 6.1 b) of the Convention, at a minimum coincides with the personal

dimension of commission of a crime in derivative position to the offender — i.e. in position of accomplice or abettor that is regulated in Sections 20 and 21 of the Criminal Code, assigning the accomplice the same criminal liability as would be assigned to the single person who would commit the same criminal offence, and elaborating on various forms of abetting — from organising, through instigation and hiring of another person to commit a criminal offence, to aiding or assisting in commission of a crime.

68. Requirements set forth by Art. 6 (2) of the Convention, have been incorporated into specifically adopted paragraphs 2 and 3 of Section 28 of Criminal Code — that exclude the condition of exercise of rights or the performance of duties connected with the fulfilment of work assignments or other tasks, clearly stating that it shall not apply if the criminal offence of genocide, the criminal offence of brutality or lawlessness, and any criminal offence that may qualify as crime against humanity, including enforced disappearance, was committed by fulfilment of an order, instruction, imperative or a guideline of a public authority body or of a superior.

Article 7 Penalties

69. Despite its relatively abstract nature due to lack of convictions for crime of enforced disappearance, the extreme gravity and seriousness of such crime is fully reflected and incorporated in the criminal system of the Slovak Republic. The basic penalties set forth in the Section 420a of the Criminal Code directly concerning the instant offence are those of imprisonment between seven to twelve years in length or duration. In cases concerning removal of children, the minimum penalty rises to ten years of imprisonment with possible oscillation to fifteen years. This can be further extended to twenty years of imprisonment for a crime of enforced disappearance with consequences entailing bodily injury or harm, or death.

70. The Slovak Republic, as a member state of the European Union and the Council of Europe, and early signatory of Protocols 6 and 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of death penalty in all circumstances, does not apply capital punishment. Definite abolition of the death penalty has been already adopted during the Czech and Slovak Federative Republic in May 1990 by amending the criminal law. Consequently, the death penalty had been prohibited also by the Charter of Fundamental Rights adopted in January 1991 that become part of the constitutional order of the successor state the Czech Republic and the Slovak Republic. The Slovak Republic since its existence has prohibited death penalty also in Art. 15 of the Constitution.

71. On the other hand, in addition to core penalties for offence of enforced disappearance determined in Section 420a of the Criminal Code — mitigating and aggravating circumstances that are at discretion of signatory parties to the Convention, form an integral part of the Slovak Criminal Law and are substantially regulated in Sections 36 and 37 of the Criminal Code.

72. Mitigating circumstances advocated by Art. 7 (2a) of the Convention, especially with a view of bringing the disappeared person forward alive or taking into consideration his contribution to clarification of the instant crime, can be easily traced in Section 36 under letters (k) to (o) of the Criminal Code. Pursuant these provisions, a more lenient punishment may apply when the offender contributed to the elimination of adverse effects of the criminal offence, or voluntarily offered compensation for inflicted damage; when he confessed to having committed the criminal offence, and showed signs of effective repentance; when he reported his criminal offence to the competent authorities; when he co-operated with the competent bodies in the investigation of his criminal activities, or when he contributed to identifying or convicting an organised group, a criminal group, or a terrorist group.

73. Aggravating circumstances, required by Art. 7 (2b) of the Convention, especially leading to death of a disappeared person, or concerning a commission of crime on a vulnerable person such as pregnant woman, minor of age or person with disabilities, can be

applicable via provisions of Section 37 c) to l) of the Criminal Code, according to which the aggravating circumstances takes place if: the offender has committed the criminal offence to prevent or frustrate the exercise of another person's fundamental rights or freedoms, or to facilitate or cover up another criminal offence; the criminal offence has been committed during a natural disaster or other extraordinary event seriously endangering lives or health of people, fundamental rights and freedoms, the constitutional system, property, public order or morality; the offender has abused his employment, occupation, function or position to obtain an unlawful or undue advantage; he has committed the criminal offence in public; or in a place, which enjoys special protection under a generally binding legal regulation, in particular the house or flat of another person; the offender has committed more than one criminal offence; he has committed the criminal offence as its organiser; or he has committed the criminal offence in association with a foreign power or a foreign official.

74. Decision concerning penalties, their calculation and imposition is a complex process subject to independent and professional judicial consideration. As stipulated by Section 38 (3), 38 (4) and 38 (6) of the Criminal Code, penalties can be reduced or increased by a third or two thirds, according to various elements present in a specific case.

75. The corresponding legislative framework — further elaborated in Sections 41 to 43 of the Criminal Code, concerning concurrent, accumulative and additional sentences — provides a set of rules and keystones to be applied fairly, flexibly and consistently. Keeping in mind this approach, applicable also to the criminal offence of enforced disappearance, it can be concluded that the main criteria set forth by the Art. 7 of the Convention are firmly present in Slovak criminal system, playing both adequate preventive and repressive role, and in case of need — shall the criminal offence of enforced disappearance ever occur — can be, and are to be duly applied.

Article 8

Statute of limitations

76. Statute of limitations set forth in the Section 87 and the following of the Criminal Code represents adequate time-limit vis-à-vis gravity and social seriousness of the crime of enforced disappearance, fulfilling the criteria of Art. 8 (1a) and 8 (1b) of the Convention, through legal guarantees that no statute of limitations whatsoever applies and prosecution and enforcement of penalty are never subject to statute of limitations in respect to this crime. Perpetrators can therefore be brought to justice, be subject to investigation, conviction and execution of penalty regardless time that has passed from the commission of criminal act.

77. More specifically, punishability of an act becomes statute-limited on the expiry a period, which is thirty years in case of a criminal offence, for which the Criminal Code allows life imprisonment; twenty years in case of a crime, for which a maximum penalty of at least ten years of imprisonment is allowed; ten years in case of other crimes; five years in cases of minor offences with penalty of at least three years; and three years in case of other minor offences.

78. However, the limitation period shall not include the period, during which the offender could not be brought before a trial because of legal impediments; the period, during which the offender stayed abroad with the intention to avoid criminal prosecution; the probationary period, in case of conditional criminal prosecution; the period, during which the bringing of indictment was temporarily postponed; and the period of interruption of criminal prosecution.

79. Limitation of criminal prosecution shall be interrupted by bringing of an indictment for the criminal offence, which is subject to the limitation, and by the subsequent acts of criminal procedure authorities — a judge for pre-trial proceedings or the court connected with the criminal prosecution of the offender, or when the offender commits an intentional criminal offence in the course of the limitation period. A new period of limitation shall commence to run as from the date of interruption of the initial limitation period.

80. Pursuant to Section 88 of the Criminal Code the expiry of the limitation period or the statute of limitation does not apply to crimes listed in the Chapter XII of the Criminal Code, including the criminal offence of enforced disappearance.

81. As for the statute of limitations related to execution of sentences imposed in respect of criminal offences set out in Chapter XII of the Criminal Code, analogically to the above — no limitation period applies. This means, that criminal offence of enforced disappearance, along with crimes of endangering of peace, terrorism, genocide, torture and other inhuman or degrading treatment, crime of lawlessness and brutality, is according to Sections 88 and 91 of the Criminal Code, punishable without any statute of limitations, regardless any circumstance.

82. The absolute prohibition of any conditionality and contextualisation in this respect, reflects on gravity and extreme seriousness of this type of crime, satisfying the societal need to prevent and respond to its occurrence with unconditional and strictest measures.

83. In addition, as of 1993 the Slovak Republic is a signatory state to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted in New York in 1968, that shall provide further guarantees of punishability of the crime of enforced disappearance, under any, and regardless of any circumstances.

84. Derivatively, the right of victims of enforced disappearance to an effective remedy, set forth in paragraph 2 of Article 8 of the Convention, is also guaranteed without any time-limitation through provisions of the recently adopted Act No. 274/2017 on the Victims of the Criminal Acts and on amendment and supplement of certain laws (the “Victims Act”), especially its Section 15. This comprehensive law concerning the rights, financial and other compensation of victims, is a transposition of the Council Directive 2004/80 on Compensation of the Victims of Criminal Acts, and the Directive of the European Parliament and the Council 2012/29/EU setting the Minimum Standards for Rights, Support and Protection of Victims of Criminal Acts.

Article 9

Jurisdiction

85. In accordance with article 9 (1) of the Convention, the Sections 3 to 6 of the Criminal Code guarantee sufficient personal, territorial and universal jurisdiction establishing the necessary competence to investigate, prosecute and punish the offence of enforced disappearance.

86. Criminal legislation of the Slovak Republic applies to everyone who commits a criminal offence on the territory of the Slovak Republic, or outside of the territory of the Slovak Republic, aboard of a vessel navigating under the flag of the Slovak Republic, or aboard of an aircraft registered in the Slovak Republic. Territorial applicability of the Criminal Code, determined in its Section 3 states that criminal offence is considered as having been committed on the territory of the Slovak Republic even if the offender committed the act, at least in part, on its territory, if the actual breach or threat to an interest protected under the Criminal Code took place or was intended to take place, in whole or in part, outside the territory, or if the actual breach or threat to an interest protected under the Criminal Code was intended to take place on its territory, or such a consequence should have taken place, at least in part, on its territory.

87. Personal jurisdiction pursuant to Section 4 of the Criminal Code, ensures criminal liability for an act committed outside the territory of the Slovak Republic by a Slovak national or a foreign national with permanent resident status in the Slovak Republic.

88. The Criminal Code is also applicable in determination of criminal liability for a particularly serious crime or felony if the act was committed outside the territory of the Slovak Republic against a Slovak national, and if the act gives rise to criminal liability under the legislation effective in the place of its commission, or if the place of its commission does not fall under any criminal jurisdiction.

89. Specific list of criminal acts leading to criminal liability under the Criminal Code, even if such act was committed outside the territory of the Slovak Republic by a foreign national without permanent residence on the territory of the Slovak Republic, legislated in Section 5a of the Criminal Code, representing basis for universal jurisdiction, includes the following offences: illicit manufacturing and possession of narcotics or psychotropic substances, poisons or precursors, and trafficking in them (Section 171 and 172 of the Criminal Code) forgery, fraudulent alteration and illicit manufacturing of money and securities (Section 270 of the Criminal Code), uttering counterfeit, fraudulently altered and illicitly manufactured money and securities (Section 271 of the Criminal Code), manufacturing and possession of instruments for counterfeiting and forgery (Section 272 of the Criminal Code), forgery, fraudulent alteration and illicit manufacturing of duty stamps, postage stamps, stickers and postmarks (Section 274 of the Criminal Code), forgery and fraudulent alteration of control technical measures for labelling goods (Section 275 of the Criminal Code), establishing, masterminding and supporting a terrorist group or its member (Section 297 of the Criminal Code), illicit manufacturing and possession of nuclear materials, radioactive substances, hazardous chemicals and hazardous biological agents and toxins (Section 298 and 299 of the Criminal Code), plotting against the Slovak Republic (Section 312 of the Criminal Code), terror (Section 313 and 314 of the Criminal Code), destructive actions (Section 315 and 316 of the Criminal Code), sabotage (Section 317 of the Criminal Code), espionage (Section 318 of the Criminal Code), assaulting a public authority (Section 321 of the Criminal Code), assaulting a public official (Section 323 of the Criminal Code), counterfeiting and altering a public instrument, official seal, official seal-off, official emblem and official mark (Section 352 of the Criminal Code), jeopardising the safety of confidential and restricted information (Section 353 of the Criminal Code), smuggling of migrants (Section 355 of the Criminal Code), endangering peace (Section 417 of the Criminal Code), genocide (Section 418 of the Criminal Code), terrorism and some forms of participation on terrorism (section 419 of the Criminal Code), brutality (Section 425 of the Criminal Code), using prohibited weapons and unlawful warfare (Section 426 of the Criminal Code), plundering in the war area (Section 427 of the Criminal Code), misuse of internationally recognised and national symbols (Section 428 of the Criminal Code), war atrocities (Section 431 of the Criminal Code), persecution of civilians (Section 432 of the Criminal Code) and lawlessness in the wartime (Section 433 of the Criminal Code).

90. Section 6 of the Criminal Code that sets forth criminal liability for an act committed outside the territory of Slovakia by a foreign national who does not have a permanent residence status in the Slovak Republic also where the act gives rise to criminal liability under the legislation effective on the territory where it was committed, the offender was apprehended or arrested on the territory of the Slovak Republic, and was not extradited to a foreign state for criminal prosecution. At the same time, the offender may not be imposed a more severe punishment than that allowed under the law of the state on the territory of which the criminal offence was committed.

91. Applicability of criminal responsibility under international treaties or other international instruments, legislated in Section 7 of the Criminal Code, is guaranteed when it is prescribed by international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic. On the other hand, provisions of Sections 3 through 6 of the Criminal Code shall not apply if their use is prohibited by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.

92. Jurisdiction over the crime of enforced disappearance can therefore, as well, be established on basis of international treaties. Where no international treaty is in place, the obligations set forth in paragraph 2 of Article 9 of the Convention can be fulfilled by international legal assistance and cooperation provided in accordance with Part Five of the Code of Criminal Procedure (Section 477 and the following), based on reciprocity. International legal assistance covers extradition of defendants and convicts, transfer of prosecution and enforcement of foreign decisions in criminal matters, as well as other forms of international legal assistance such as delivery of legal instruments, written materials and other objects in connection with criminal proceedings in the requesting state, exchange of information, questioning of the accused, witness and expert witness, joint

investigation, temporary surrender of a person deprived of liberty for the purpose of giving evidence as a witness, provision of penal records data and data regarding convictions and other procedural actions.

93. According to Section 480 of the Code of Criminal Procedure, procedures of Part Five are also applicable to requests and cooperation with the international courts. The Slovak Republic ratified the Rome Statute of the International Criminal Court in April 2002, with entry into force in relation to it on 1 July 2002, publishing the Notification of the Ministry of Foreign Affairs of the Slovak Republic No. 333/2002 Coll.

94. In this context, the jurisdiction of the Slovak courts apply for all perpetrators of war crimes and crimes against humanity — including enforced disappearance, if these crimes have been committed in the territory of the Slovak Republic, or if either the perpetrator or the victim have been the Slovak national. Slovak court will also have jurisdiction in other cases regardless of territorial and personal jurisdiction if the perpetrator has been arrested in the Slovak Republic, or has been extradited to it, provided that criminal proceedings have not been conducted before the International Criminal Court or a court of another State.

95. Substance-wise, given the gravity and seriousness of the crime of enforced disappearance, it is worth mentioning that pursuant to Section 14 d) j) and k) of the Criminal Code, the domestic jurisdiction over criminal offences of abuse of power by a public official, the criminal offence of establishing, masterminding and supporting a criminal or a terrorist group, and jurisdiction over particularly serious crimes committed by a criminal group or a terrorist group, shall be assigned to relatively newly established Specialised Criminal Court.

96. Due to principle of complementarity, criminal proceedings will not be conducted in the Slovak Republic only if proceedings are already in progress before the International Criminal Court. In such case, the Slovak Republic shall respect the jurisdiction of the International Criminal Court in accordance with the Rome Statute that at the same time explicitly excludes the possibility of invoking immunity under national or international law.

97. The general principle of international criminal law of *aut dedere aut iudicare* establishing the obligation of the state to extradite or to prosecute and judge the perpetrator of internationally recognised crime, stipulated also in the instant Convention, is therefore followed.

98. In addition, the European Convention on Extradition and the Council Framework Decision 2002/ 584/ JHA of 19 June 2002 on the European arrest warrant and the surrender procedures between Member States, together with a number of bilateral agreements with neighbour and other states, reinforce establishment of adequate personal and territorial jurisdiction, including in relation to the crime of enforced disappearance.

Article 10

Detention

99. As already stated in relation to Article 9 of the Convention, Slovak authorities shall act in all cases where the crime of enforced disappearance has been committed in Slovak territory, or by a Slovak national. In cases when the Slovak Republic may not exercise its jurisdiction, the Slovak authorities will act on request of another state or the internationally recognized criminal law bodies such as the International Criminal Court.

100. To ensure the presence of the suspect, the defendant or the convict in the proceedings, pre-trial investigation, hearing of the case in court and execution of a sentence, or to prevent further commitment of criminal activity, precautionary measures such as arrest, intense supervision, home arrest, obligation to live separately from the victim, bail, confiscation of documents, obligation to regularly register at the police office or written undertaking not to leave the place of residence, are to be applied. This would certainly concern any person suspected of having committed a criminal offence of utmost gravity under Chapter XII of the Criminal Code, including the crime of enforced disappearance (420 a of the Criminal Code).

101. Grounds, reasons and procedure for custody or temporary detention are specified in Chapter Four, Sections 71 to 76 of the Code of Criminal Procedure. As a general rule, the accused shall only be remanded in detention when there are reasonable grounds to believe that the act subject to criminal procedure had been committed, showing elements of criminal offence, and the acting of suspect, or other indicators and facts lead to reasonable fear that: the suspect will escape or go into hiding to avoid prosecution or punishment, in particular if his identity cannot be immediately established and if he does not have a permanent residence; he will try to influence witnesses or other persons subject to investigation, or otherwise frustrate the investigation of facts relevant for criminal prosecution; or he will continue in his criminal activity, accomplish the attempted criminal offence or commit the criminal offence he had prepared or had threatened to commit.

102. In addition, a request to extradite a person to a foreign State or surrender to the International Criminal Court or surrender according to the European arrest warrant, a request of a foreign state to temporarily detain the wanted person waiting for request on extradition or a European arrest warrant and a request of a foreign state to detain the convicted person pending a decision on recognition of court decision of a foreign state and execution of a sentence shall constitute grounds for detention. However, detention may be imposed only in cases when the achievement of objectives cannot be achieved by precautionary measures of lesser severity.

103. The fundamental rights of a person accused or suspected of a criminal act are primarily guaranteed by Art. 17 of the Constitution, stipulating that a person may be detained only on the basis of valid law. The detained person must be immediately informed of the reasons of his detention, provided opportunity to be heard and within 48 hours either released or handed over to the court. The judge must hear the detained and consequently decide on his custody or release within 48 hours, and in particularly serious crimes within 72 hours from restriction of his personal freedom. The same rules apply to the accused, who too may be arrested only on the basis of a written, substantiated order of a judge. The arrested person must be handed over to the court within 24 hours. The judge must hear the arrested person and decide on custody or release within 48 hours and in particularly serious crimes within 72 hours from the detention. A person may be taken into custody only for reasons and for a period specified by law and on the basis of a court ruling.

104. Further rights of a suspect are guaranteed by Section 2 and other provisions of the Code of Criminal Procedure and include right to be aware of an act of which the person is suspected of, right to a legal counsel from the moment of detention or first interrogation, right to receive translation and interpretation services, to inform consular bodies and at least one — usually a close — person, right to receive necessary or urgent medical assistance, right to be informed of the maximum term of detention before the start of procedures in a judiciary institution, right to give evidence or remain silent, submit requests and challenges, documents and objects that are important for the investigation, right to information of pre-trial investigation as well as appeal against pre-trial acts or decisions.

105. According to Section 74 of the Code of Criminal Procedure, notification on the remand in custody issued by a court or a judge in the pre-trial proceedings shall be served without delay to a relative of the accused or another person designated by the accused, and to his defence counsel; the notification may be served on the person designated by the accused only if this does not prejudice the purpose of the custody. The court and in pre-trial proceedings the judge for pre-trial proceedings shall notify on the custody of a foreigner also the consular office of a state of his nationality or his residence, unless the international treaty stipulates otherwise.

106. Within the rules of Public International Law, if a person detained or arrested is a national of another State, his or her right to apply for consular assistance is guaranteed by concluded consular agreements between the Slovak Republic and a particular state, as well as according to the provisions of the Vienna Convention on Consular Relations of 1963, generally expecting that in cases when a person having the nationality of another state is detained, public prosecutor or a judge in pre-trial proceedings are obliged to inform the Ministry of Foreign and European Affairs of the Slovak Republic and the diplomatic mission or consular agency of his or her state.

107. In addition, as already mentioned, Section 74 (1) of the Code of Criminal Procedure — on Notification on the Remand in Custody, on the Release and on the Escape from the Custody — states an obligation that the Slovak court and in pre-trial proceedings the judge for pre-trial proceedings shall notify on the custody of a foreigner also the consular office of a state of his nationality or his residence, unless the international treaty stipulates otherwise. Additional provision for realisation of the right of detained foreign nationals to contact their respective consular bodies is represented by Section 50 of the Act No. 221/2006 on Execution of Custody (the “Execution Custody Act”).

108. Pursuant to Section 85 of the Code of Criminal Procedure, if any of the grounds for custody is present as defined in Section 71 paragraph 1 of the Code of Criminal Procedure, an investigator may place the accused under preliminary detention even if the charge was not yet filed. The prior authorization of prosecutor shall be obligatory. Without such authorization the detention shall only be possible if the matter is urgent and the authorization cannot be obtained in advance, in particular if the person concerned was caught *in flagranti delicto* or attempting to escape.

109. The personal freedom of a person caught *in flagranti delicto* or immediately thereafter can be restricted by anyone, if this is necessary for establishing the person’s identity, preventing escape, securing evidence or preventing further crimes. Such person, however, shall have to be handed over to the Police Corps, Military Police unit (garrison commander) or Customs Administration unit. The policeman who carried out the detention or to whom a person detained under special law or person caught *in flagranti delicto* was handed over under Section 85 (2) of the Code of Criminal Procedure, shall without delay notify the prosecutor of the detention and draw up a report indicating the place, time and detailed description of the circumstances of the detention as well as essential grounds for it, and personal data of the detained person. He shall without delay deliver a duplicate of the report to the prosecutor, who’s obligation is, as already explained, to take any necessary and adequate proceedings in relation to any crime, including the crime of enforced disappearance, further.

Article 11

Obligation to prosecute and extradite

110. The obligation to prosecute any criminal acts, to ensure that criminal offences be properly investigated and their perpetrators justly punished under the law with due respect to fundamental rights and freedoms, is stated in the very first section of the Code of Criminal Procedure and elaborated elsewhere in the same code as well as in Section 3 (2) of the Public Prosecution Act.

111. The quasi-universal and universal jurisdiction, i.e. determination of the criminal liability for an act committed outside the territory of Slovak Republic by a foreign national who does not have a permanent residence in the Slovak Republic, is encoded in Sections 5a and 6 of the Criminal Code, with the former providing a list of serious crimes when criminal liability is to be determined even if such act was committed outside the territory of the Slovak Republic by an alien who has not his or her permanent residence on the territory of the Slovak Republic (see also Article 9 — Jurisdiction hereof).

112. A lack of direct inclusion in the list might have been caused by posteriority in time as for the inclusion of crime of enforced disappearance into the Slovak Criminal Code, under Section 420a, directly following the crime of torture or inhuman or degrading treatment (Section 420 of the Criminal Code), as well as the fact that no crime of enforced disappearance has been, in the context of Slovakia, investigated, registered or committed.

113. Regardless the above, Section 6 of the Criminal Code provides for obligation to determine the criminal liability for an act committed outside the territory of the Slovak Republic by a foreign national without permanent residency status in the Slovak Republic, also if the act is criminal according to the legislation effective on the territory where they were committed, the offender has been apprehended or arrested on the territory of the Slovak Republic, and at the same time s/he has not been extradited to a foreign state for criminal prosecution purposes. At the same time, the offender may not be imposed a more

severe penalty than that allowed under the law of the state on the territory of which the criminal offence has been committed.

114. The prescribed standards of evidence for prosecution and conviction are to be followed regardless particularities of the case or circumstances, including the active exercise of Slovak jurisdiction pursuant to Art. 9 (1) of the Convention, or extradition or surrender of the accused or offender to another state or to the international criminal tribunal according to Art. 9 (2) of the Convention. Based on the principle of equality of states in the international relations and other principles of Public International Law, as well as fundamental principle of non-discrimination being at the core of the International Human Rights Law, standards of evidence cannot be less stringent depending on the state party or the international forum chosen for the actual exercise of justice.

115. The framework regulation of standards of evidence in the Slovak Criminal Law form an integral part of fundamental principles of criminal procedure listed in paragraphs 10 to 12 of Section 2 of the Code of Criminal Procedure. According to these, the bodies involved in criminal proceedings shall proceed so as to properly establish the facts of the case that do not give rise to reasonable doubts, to the extent that is necessary for making the decision. They shall procure the evidence as part of their official duties. The parties shall also be granted the right to procure the evidence. The bodies involved in criminal proceedings shall thoroughly clarify the circumstances regardless of whether they prejudice or benefit the accused, and they shall take the evidence in either direction so as to enable the court to arrive at a fair decision.

116. The court may also take other evidence than that proposed by the parties. The parties have the right to supply evidence proposed by them. Bodies involved in criminal proceedings and the court shall evaluate the legally obtained evidence in accordance with their deep conviction based on the careful examination of all the facts of the case, separately and jointly, irrespective of whether they were supplied by the court, the bodies involved in criminal proceedings or by one of the parties to the proceedings.

117. Equality before law and the right to fair trial, regardless of citizenship, nationality, residence or other status, are primarily guaranteed by Part Seven of the Constitution. The right to judicial and other legal protection enshrined in the Art. 46 of the Constitution, states that everyone may claim his or her rights in an independent and impartial court; anyone who claims to have been deprived of his or her rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision re-examined; and everyone is entitled to compensation for damage incurred as a result of an unlawful decision by a court, or another state or public administration body, or as a result of an incorrect official procedure.

118. Everyone has the right to refuse to testify if, by doing so, s/he might bring on the risk of criminal prosecution for him or herself or a close person; everyone has the right to legal assistance in court proceedings, or proceedings before other state or public administration bodies from the start of the proceedings, under conditions laid down by law. All participants are equal in the proceedings and anyone who declares that s/he does not have a command of the language in which the criminal, administrative or court proceedings are conducted has the right to an interpreter (Art. 47 of the Constitution).

119. Pursuant to Art. 48, no one may be removed from his assigned judge, while the jurisdiction of the court shall be laid down by law. Everyone has the right to have his case tried in public, without undue delay, and in his presence and to deliver his opinion on all pieces of evidence. The public may be excluded only due to legally given reasons.

120. Only the law shall lay down which conduct constitutes a criminal act and what punishment or other forms of deprivation of rights or property may be imposed for its commitment (Art. 49 of the Constitution).

121. Only the court decides on guilt and punishment for criminal acts, while everyone against whom a criminal proceeding is conducted is considered innocent until the court establishes his guilt by a legally valid verdict. The accused has the right to be granted the time and opportunity to prepare his defense, and to defend herself or himself either alone or through a defense counsel. S/he has the right to refuse to testify; this right may not be

denied in any way. No one may be criminally prosecuted for an act for which s/he has already been sentenced, or of which s/he has already been acquitted. This principle does not rule out the application of extraordinary remedies in compliance with the law. Whether any act is criminal is assessed, and punishment is determined, in accordance with the law valid at the time when the act was committed. A more recent law is applied, if it is more favorable for the perpetrator (Art. 50 of the Constitution).

122. Given the above, further elaborated in specialised laws of Slovakia, guarantees that anyone against whom the proceedings of enforced disappearance are brought in the Slovak Republic, as signatory party to the Convention, shall enjoy the right to fair trial and fair treatment at all stages of the proceedings.

123. Due to fundamental principles of judicial proceedings that include independence and impartiality of judicial profession, mandatory character and accessibility of courts, equality of parties, public nature of the proceedings and the announcement of judgments, duty of the court to decide on the matter under its competence according to law, objectively and in a timely manner, right of those with a justified interest to access and inspect the files etc., listed among other, in Section 3 of the Act No. 757 / 2004 Coll. on Courts and on amendment and supplements to certain laws — everyone, including persons tried for an offence of enforced disappearance, shall benefit from the right to a fair trial before a competent, independent and impartial court or tribunal established by law, as required by Art. 11 (3) of the Convention.

Article 12

Efficient investigation

124. As already stated in relation to Art. 11 of the Convention, the obligation to prosecute any criminal acts and to ensure that criminal offences be properly investigated, form one of the fundamental principles of criminal procedure. Under this principle of legality and officiality, enshrined in Sections 2 (5), 2 (6) and 2 (10) of the Code of Criminal Procedure, the state is represented by public prosecutor. Unless, the law or international treaty promulgated in a manner prescribed by law or the decision of an international organisation which is binding on the Slovak Republic, provides otherwise, the prosecutor has the duty to prosecute all criminal offences that came to his or her knowledge. The bodies involved in criminal proceedings and the courts shall act *ex officio*. They have the duty to deal with the cases involving detention as a matter of priority and without undue delay. Bodies involved in criminal proceedings or the courts shall not take account of the petitions whose content infringes on the fulfilment of this duty.

125. The bodies involved in criminal proceedings shall proceed so as to properly establish the facts of the case that do not give rise to reasonable doubts, to the extent necessary for making the decision. They shall procure the evidence as part of their official duties. The parties shall also be granted the right to procure the evidence. The bodies involved in criminal proceedings shall thoroughly clarify the circumstances regardless of whether they prejudice or benefit the accused, and they shall take the evidence in either direction so as to enable the court to arrive at a fair decision.

126. The above mentioned guarantees and procedures apply to all crimes, including the criminal offence of enforced disappearance, respecting the state obligations set forth in Art. 12 of the Convention. As a result, anyone, including the persons who allege that a person has been subjected to the instant crime, may report on the criminal act having taken place, orally or in writing, to the police or public prosecutor. These, as already stated, have an obligation to act *ex officio*, taking the necessary measures of their own initiative with a view to conduct the proceedings fairly and efficiently. This includes *inter alia* collection of the necessary information, search for, discovery and identification of the perpetrators, prevention of their fleeing or hiding and securing of places, items and traces of the crime. If facts ascertained after the commencement of criminal prosecution give reasonable grounds to conclude that a certain person has committed a criminal offence, the police officer shall forthwith issue a resolution to file charges of which he immediately notifies the accused and which he serves on the prosecutor not later than within 48 hours.

127. The Code of Criminal Procedure defines a circle of persons who have the right to participate in criminal investigation, especially through presentation of relevant evidence. This right belongs to, first of all, to the accused, to his or her defending attorney, to legal representative of the accused in cases when the latter does not have full legal capacity due to lack of age or other defined reasons, and to the person who has been harmed, i.e. the victim of a crime. The accused and his attorney have, pursuant to Section 213 of the Code of Criminal Procedure, the right to participate in acts of investigation themselves, i.e. in person.

128. Pursuant to Sections 340 to 344 of the Criminal Code, failure to report a criminal offence, failure to report a criminal offence, interfering with judicial independence, contempt of court and hindering or obstruction to justice — as hindering or obstructing of activities of an investigator, prosecutor, judge, lawyer, expert, interpreter or other persons and authorities in performing their duties in relation to criminal investigation or proceedings — establish specific offences, to which criminal liability and penalties of imprisonment between three to up to eight years apply.

129. The protection of a witness within the criminal proceedings is covered by Section 136 of the Code of Criminal Procedure. If there is a reason to believe that a witness or his or her close person, such as relative, may be endangered by the disclosure of their place of residence, the witness may be allowed to give the address of his workplace or other address for the service of summons. If there is a reason to believe that the life, health or physical integrity of a witness or his close person may be endangered by the disclosure of his or her identity, place of residence, and/or the place of stay, the witness may be allowed to withhold his or her personal data.

130. Before examining a witness whose identity should remain secret, the criminal procedure authority and the court shall take the necessary measures to ensure the protection of the witness, in particular by changing his or her physical appearance and voice, or conducting examination with the help of technical equipment, including audio and video transmission technology. The authorisation to these shall be given by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor.

131. In addition, witnesses shall not be asked to testify on the matters that involve data they are obliged to keep secret, except when the competent body waives the confidentiality obligation. Neither shall a witness be asked to testify if his or her testimony could bring the danger of criminal prosecution to him or herself, their relative or other close person; if his or her testimony could breach confessional secrecy or the secrecy of information entrusted to him as to person entrusted with pastoral care; or if his testimony would constitute the breach of confidentiality prescribed by law or by an international treaty, unless that obligation is waived by the competent body or the body in whose interest such obligation was imposed.

132. Pursuant to Section 135 of the Code of Criminal Procedure, if the person examined as a witness is under fifteen years of age and the examination concerns matters whose recollection could have, given the witness's age, a negative influence on his or her mental and moral development, the examination shall be conducted with utmost consideration, and care shall be taken not to have to repeat, if possible, the examination in the subsequent proceedings; an education specialist or a person with expertise in juvenile education who, taking account of the object of examination and the level of mental development of the interviewed person, shall contribute to the proper conduct of examination, may be taken up.

133. Protection of witnesses is further guaranteed and regulated by Act No. 256/1998 Coll. on Protection of a Witness and on amendment and supplements to certain laws, which covers grounds and procedures providing for protection and assistance to various types of witnesses, including to witness under the threat and witness deserving special protection, as well as their relatives and other close persons, who — as a result of their interlocution and provision of evidence, may be in life or health-threatening danger from the perpetrators of crime, to which life-imprisonment may apply, or an organised group, a criminal group or a terrorist group.

134. The new Victims Act has been adopted in the end of 2017, paying special attention to vulnerable victims and prevention of re-victimisation.

Article 13 Extradition

135. The Slovak Republic is a signatory to bilateral treaties with its neighbour and other states, as well as multilateral treaties concerning extradition, such as the European Convention on Extradition (notification of the MFA SR No. 549/1992 Coll.), with the First and Second Additional Protocol to the European Convention on Extradition (notification of the MFA SR No. 10 and 11/1997 Coll.), as well as the European Convention on Mutual Assistance in Criminal Matters (notification of the MFA SR 550/1992 Coll.), including Additional Protocol (notification of the MFA SR No. 12/1997 Coll.), and the Convention on Mutual Assistance in Criminal Matters among Member States of the European Union, drafted by the Council, according to Art. 34 of the Treaty on the European Union, with the Protocol, concluded on 29 May 2000 (notification of the MFA SR No. 572/2006 Coll.).

136. Decisions regarding extradition of persons into responsible member state are issued under the Regulation (EC) No. 604/2016 of the European Parliament and of the Council, pursuant to which states applying this regulation are obliged to comply with non-refoulement principle, if there are reasonable grounds to assume that, if extradited, the person would be in danger and would be subject to torture. The Dublin center of migration office guarantee in its decision issued within its scope the right to effective appeal against administrative decision that is without suspensive effect, unless the court decides otherwise.

137. Conditions for extradition are laid down in Part Five, Chapter Two of the Code of Criminal Procedure, Section 489 and the following, determining the Ministry of Justice as body that may request extradition. If the accused stays abroad and if his extradition is necessary, the presiding judge of the panel shall issue a warrant of arrest — known as “international warrant of arrest”. In the pre-trial, the judge for pre-trial proceedings shall issue the international warrant of arrest upon a motion by the prosecutor. The international or European warrant of arrest has, on the territory of the Slovak Republic, the same effects as a warrant of arrest. When the Ministry of Justice refrains from making the request, because extradition from abroad cannot be expected, it informs to this effect the court which issued the warrant of arrest.

138. Extradition is admissible only if the act for which extradition is requested is a criminal offence under the law of the Slovak Republic, and is punishable under the same law by a maximum prison sentence of at least one year. Extradition for the purposes of enforcement of a prison sentence is admissible if the sentence imposed or the remainder to be served is at least four months. Several sentences or non-served remainders of several sentences shall be added up.

139. Pursuant to Section 501 e) of Code of Criminal Procedure, extradition is inadmissible when the criminal offence for which extradition is requested is solely of a political or military nature. Extradition therefore cannot be granted for a political offence, criminal offence connected with the former, or a military criminal offence within the meaning of the European Convention on Extradition. This, however, does not apply to criminal offences of genocide, crimes against humanity, war crimes and terrorism, and would certainly not apply to the crime of enforced disappearance, that is by no means regarded as a political crime.

140. Despite the lack of practical experience, due to non-occurrence of crime of the enforced disappearance, the Convention could be considered as necessary legal basis for extradition, as it sets forth in sufficient detail all required conditions for extradition — from the non-political nature of the crime of enforced disappearance, through mutually or multilaterally recognised seriousness and punishability of such crime, including the length of penalty, to necessary legal guarantees of fundamental rights such as right to fair trial, principle of non-discrimination, equality before the law, protection of victims, principle of non-refoulement etc.

141. In domestic terms, under Section 501 b) of the Code of Criminal Procedure in case of a person, who applied in the Slovak Republic for asylum or who was granted such asylum or provided supplementary protection, to the extent of the protection provided to such persons by a separate act or by an international treaty the extradition is inadmissible.

However, this is not true if it concerns a person who requested for an asylum in the Slovak Republic repetitively and his/her request for asylum has already been lawfully decided. Pursuant to Section 510 (1) of the Code of Criminal Procedure the Minister of Justice shall have the authority to grant extradition. He may not grant extradition if either the Regional Court or the Supreme Court found that extradition was inadmissible. Even though the court found the extradition admissible, the Minister of Justice may decide not to grant extradition pursuant to Section 510 (2) of the Code of Criminal Procedure if there is reasonable ground to believe that the person whose extradition is sought would in the requesting State be subjected to persecution for reasons of his origin, race, religion, association with a particular national minority or class, his nationality or political opinions or that due to these factors his status in the criminal proceedings or in the enforcement of the sentence would be prejudiced.

Article 14

International legal assistance

142. The provision of international legal assistance in criminal matters is governed by bilateral and multilateral treaties, as well as by specific Part Five of the Code of Criminal Procedure dedicated to international legal assistance and international cooperation in criminal matters.

143. Except of being a party to a number of bilateral agreements on mutual legal assistance with countries of territorial proximity or mutual convenience, main multilateral agreements including the European Convention on Mutual Assistance in Criminal Matters, its Additional Protocols and the European Convention on the Transfer of Proceedings in Criminal Matters of 1972, as a result of membership of the Slovak Republic in the European Union, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29 2000, and its Additional Protocol, also applies.

144. Despite not having signed any specific procedural treaty in relation to the crime of enforced disappearance, the hereto described existing framework provides for all necessary measures and international legal pathways to ensure effective and fair implementation and practical realisation of the provisions of the Convention not only in the Slovak Republic, but within much wider community of states ready to prevent and eliminate the crime of enforced disappearance. This is *inter alia* secured by precedence of efficient and fair realisation of domestic and international obligations, including prevention, investigation and punishment of the crime of enforced disappearance committed anywhere, over strictly formalistic approach that may restrict realisation of justice. *In concreto*, despite honouring international treaties, the Slovak Republic does not strictly condition international legal assistance in criminal matters on the existence of a bilateral or jointly binding multilateral treaty.

145. As for domestic law, pursuant to Part Five, Chapter Five, Section 531 and the following of the Code of Criminal Procedure, acts carried out after the commencement of the criminal proceedings in the Slovak Republic on the territory of another State on the basis of a request by the Slovak authorities, or such acts carried out on the territory of the Slovak Republic on request by foreign authorities, in particular service of documents, hearing of persons and taking of other evidence, is generally understood as legal assistance.

146. Requests for legal assistance emanating from the Slovak pre-trial authorities shall be transmitted abroad through the General Prosecutor's Office. Requests for legal assistance emanating from the Slovak courts shall be transmitted abroad through the Ministry of Justice. Diplomatic channels shall not be excluded. If an international treaty provides so, the Slovak authorities may transmit their requests abroad also through other channels. The policeman may transmit the requests abroad solely through the good offices of a prosecutor.

147. A request for legal assistance shall, in addition to a precise description of the required act of assistance, contain a description of the facts of the offence which is the basis of the request, the legal denomination of the offence together with a verbatim wording of the pertinent legal provisions, the personal data of the accused or, as the case may be, of the

victim or the witnesses if their examination is requested, as well as further details required for the proper execution of the requested legal assistance.

148. If the personal appearance of a person who stays abroad is required for procedural act, s/he must be served the summons by a request for legal assistance.

149. Pursuant to Section 537 of the Code of Criminal Procedure, Slovak authorities shall carry out the legal assistance requested by foreign authorities in the manner provided for in the Code or in an international treaty. If the legal assistance shall be provided on the basis of an international treaty by a procedure not provided for in this Code, the responsible prosecutor shall decide how such assistance shall be carried out.

150. Requests of a foreign authority for legal assistance shall be sent to the Ministry of Justice. The district prosecutor's office in whose district the requested assistance shall be carried out shall have the responsibility for the execution of the request for legal assistance made by a foreign authority. If more Prosecution Offices have territorial jurisdiction, the Ministry of Justice shall send the request to the General Prosecution Office of the Slovak Republic to make a decision and determine which Prosecution Office shall provide for its execution.

151. Forms of international legal assistance therefore include extradition of defendants and the accused, services of documents, taking of specific procedural actions such as questioning of the defendant, witness, or expert under oath, on-the-spot inquiry, search of premises and people, seizure of objects, property and surrender of things, provision of penal records and information from criminal records, creation of joint investigative teams, temporary surrender of detained person from abroad for execution of procedural acts and/or temporary surrender of detained person abroad, cross-border observation and pursuit etc. Most of the requests concerning the above are to be submitted to the General Prosecutor Office, while, for example, authority for granting of transit of a person through the territory of the Slovak Republic for the purposes of criminal prosecution or execution of a prison sentence upon a request by a foreign authority, belongs to the Minister of Justice.

Article 15

International cooperation

152. Bilateral and multilateral legal cooperation in the context of crime of enforced disappearance, with a view of assisting the victims, searching for, locating and releasing the disappeared persons, and paying human tribute to them in the event of death, is analogical to international legal assistance focused on investigation of the crime itself, described under Article 14.

153. From the multilateral perspective, including search for the disappeared persons, for instance, incoming or outgoing requests can also be transmitted through the International Criminal Police Organisation (INTERPOL), and if it concerns delivery or receiving of requests in relation to States using the Schengen Information System through the special unit of Police Force SIRENE.

154. Pursuant to Section 480 of Code of Criminal Procedure, the procedures relating to international legal assistance and cooperation apply also to satisfy requests emanating from the international courts. Except of procedure and the decision-making relating to the surrender of a person to an international court, that are governed *mutatis mutandis* by the provisions concerning extradition, these may also concern other aspects, including the rights of the victims. The enforcement of the judgement made by an international court in the territory of the Slovak Republic shall also be governed *mutatis mutandis* by the provisions on recognition and enforcement of foreign decisions.

155. Despite the fact that at the time of writing this report, the Slovak Republic has not received any requests or letters rogatory from another state party to the Convention to provide assistance to victims of enforced disappearance, neither has issued any such requests to other state parties to the Convention, in case of relevance, the existing framework consisting of 1) being a signatory to the Convention 2) bilateral and multilateral treaties on international legal assistance and cooperation, and 3) domestic provisions of Part

Five of the Code of Criminal Procedure, should suffice for taking all necessary steps and measures to fulfil the obligations set forth in Article 15 of the Convention.

Article 16

Non-refoulement

156. The principle of prohibition of expulsion, return, surrender or extradition of a person to a state where there are substantial grounds to believe that s/he might be subject to enforced disappearance, is enshrined in several domestic, international and European instruments, and shall form an integral part of the human rights guarantees in Slovak criminal procedure.

157. As already mentioned in relation to extradition, pursuant to Section 501 b) of the Code of Criminal Procedure extradition of a person who applied in the Slovak Republic for asylum or who was granted such asylum or provided supplementary protection to the extent of the protection provided to such persons by a separate act or by an international treaty, in this case extradition is inadmissible; this isn't true if it concerns a person who requested for an asylum in the Slovak Republic repetitively and his/her request for asylum has already been lawfully decided. Pursuant to Section 510 (1) of the Code of Criminal Procedure the Minister of Justice shall have the authority to grant extradition. He may not grant extradition if either the Regional Court or the Supreme Court found that extradition was inadmissible. Even though the court found the extradition admissible, the Minister of Justice may decide not to grant extradition to Section 510 (2) of the Code of Criminal Procedure if there is reasonable ground to believe that the person whose extradition is sought would in the requesting State be subjected to persecution for reasons of his origin, race, religion, association with a particular national minority or class, his nationality or political opinions or that due to these factors his status in the criminal proceedings or in the enforcement of the sentence would be prejudiced. The penalty of expulsion, codified in Section 65 of the Criminal Code, is also subject to strict conditions. Generally pursuant to Section 65 (1) of the Criminal Code the court may, if it is required in the interest of the safety of persons or property or in any other interest, impose the sentence of expulsion from the territory of the Slovak Republic on the offender who is neither a national of the Slovak Republic, nor the person who has been granted asylum status or supplementary protection. Under the Section 65 (f) the sentence of expulsion may not be imposed on the offender if he shall be extradited to the state where his personal freedom would be threatened for reasons of his origin, race, religion, association with a particular national minority or class, his nationality or political opinions; this is false if the person can be on reasonable grounds found to be dangerous for security of the Slovak Republic, or had been convicted for particularly serious felony and is a threat to the Slovak Republic. However, pursuant to Section 65 (f) of the Criminal Code, penalty of expulsion may not be impose on offender if he shall be extradited to the State where his life would be endangered for reasons of his race, nationality, religion, association with a particular social group or political opinions, or where the possibility of exposure to torture, inhuman or degrading treatment or punishment might be at stake, or where death penalty had been imposed on him or there is a presumption such penalty may be imposed in pending criminal procedure.

158. More generally, the Asylum Act, that has transposed the core principles and provisions of the Common European Asylum System and the *acquis communautaire* in the given area, taking strong notice of the relevant jurisprudence of the European Court for Human Rights in relation to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, shall guarantee that principle of non-refoulement applies for any decision where the threat to life, physical integrity or possibility of exposure to torture, inhuman or degrading treatment or punishment of a person, might be at stake.

159. As already mentioned above in connection with Art. 13 of the Convention, decisions regarding extradition of persons into responsible member state are issued under the Regulation (EC) No. 604/2016 of the European Parliament and of the Council, pursuant to which states applying this regulation are obliged to comply with non-refoulement principle, if there are reasonable grounds to assume that, if extradited, the person would be in danger and would be subject to torture. The Dublin center of migration office guarantee in its

decision issued within its scope the right to effective appeal against administrative decision that is without suspensive effect, unless the court decide otherwise.

160. Administrative procedures relating to foreign nationals are regulated by the Foreigners Residence Act and are internally elaborated in instructions of the Director of the Border and Alien Police of the Presidium of the Police Force, such as order No. 54/2013 on procedure of administrative expulsion of a foreign national, custody of a national of the third country and voluntary return of a national of the third country from the territory of the Slovak Republic. The principle of non-refoulement is also explicitly legislated in Section 81 of the Foreigners Residence Act and it is a legal obligation of an administrative authority to consider whether any reasons or grounds for direct or indirect application of the instant principle may be present. In such cases, a foreign national shall be granted, as a minimum, the so-called tolerated stay. That, however, covers only a limited scope of rights, requiring, for instance, self-financing of obligatory health insurance.

161. Administrative decisions may be subject to judicial, court appeals that generally provide for more consistent application of the principle, where the suspensive effect of an appeal of a negative administrative decision has not always been observed especially by law enforcement authorities of Border and Aliens' Police.

162. As for the nature of possible persecution or threat of enforced disappearance, there is no doubt that such gross violation of human rights, with the risk of serious harm to life and personal integrity, should provide for and be considered a legitimate ground for adequate interpretation and application of the principle of non-refoulement.

Article 17

Prohibition of secret detention

163. The prohibition of secret detention or other such practices stems from the constitutional and legal principles that are at the foundation of democratic and legal system of the Slovak Republic. As already explained in the General Part of this report, specific Article 17 of the Constitution, as well as fundamental principles of criminal legal procedure listed in Section 2 of the Code of Criminal Procedure, elaborated further in other parts of the Code in relation to specific procedures and measures, shall provide for a standard legal framework ensuring the full compliance with the Article 17 of the Convention.

164. Everyone has the right to personal liberty and may be restricted or deprived of it only on strictly defined grounds prescribed by law. Unlawful deprivation of liberty in fact means *actus reus* or a criminal act against personal freedom or liberty, to which an entire Chapter of the Criminal Code (from Section 179 and the following) is dedicated.

165. Anyone deprived of liberty must be immediately informed of the reasons for this deprivation, has a right to legal assistance in the form of defence attorney acting *ex officio* as well as right to choose a close person who would be informed by responsible authorities of his or her situation.

166. As mentioned under Article 10 concerning Detention, grounds and conditions of deprivation of liberty in context of criminal legal procedure, in the form of custody or temporary detention, are regulated in Sections of 71 and the following of the Code of Criminal Procedure, with Section 85 dealing with detention of a suspect person, Section 86 on detention of an accused and Section 88 providing for reasons on restriction of personal liberty of a witness, if no less strict measures can ensure his or her participation in the criminal proceedings.

167. Decisions concerning the deprivation of liberty are issued by judge, public prosecutor or policeman, depending on the stage of criminal proceedings, or on specific measure that is to secure fair and efficient conduct of criminal proceedings. Challenging of the reasons, actual state, length, physical conditions and lawlessness of detention or other form of deprivation of liberty, by the concerned person or other persons with legitimate interests, shall always be possible through an independent court. Victims of unlawful restriction or deprivation of liberty, custody or imprisonment, are entitled by law to adequate compensation.

168. Guarantees that persons deprived of liberty are held in officially recognised and supervised places are also stipulated in specific laws, especially the Police Force Act, the Public Prosecution Act, Custody Execution Act and the Imprisonment Act, and internal instructions of the Ministry of Interior of the Slovak Republic and the Prison Corps. These define all concerned subjects, their rights and obligations, as well as bodies responsible for overseeing places and institutions where the personal freedom can be legally restricted.

169. The rights of persons deprived of liberty, as already mentioned, include pursuant to Section 36 of the Imprisonment Act — the right to legal counsel and communication without presence of third persons. Information and regular contact with the close persons, including visits, telephone calls and correspondence is secured, among other by Sections 24 to 27 of the Imprisonment Act. In case of foreign nationals, contact and communication with consular bodies of their country, as already elaborated in part concerning Art. 10 — Detention, is also an integral part of the person's rights.

170. Access to places, in which personal liberty is being deprived, is generally granted to police corps, public prosecutors and judges. The supervisory role of the Public Prosecution over decisions and measures taken by police, is guaranteed both by provisions of the Code of Criminal Procedure and the Public Prosecution Act, especially its Section 18, stressing prosecutors' supervision over compliance with the law in all institutions and places in which personal liberty is deprived. These include places of custody and detention, police cells, prisons, places of disciplinary punishment of the soldiers and military personnel, places where protective measures imposed in line with the provisions of the Code of Criminal Procedure are being realised, such as protective medical treatment, re-education, rehabilitation or protective supervision.

171. Control over the prisons and custody is also granted to the National Council of the Slovak Republic (Parliament), the Minister of Justice or persons acting on his behalf, the General Director of the Prison Corps and persons acting on his behalf, and other persons determined by law or international treaty, such as the UN and European Conventions against Torture, Inhuman or Degrading Treatment or Punishment.

172. In Slovak Constitutional system, as already explained in the General Part of this report, the right to inspect and monitor places, treatment and living conditions of persons deprived of liberty, to obtain information relating to the above, to have access to relevant premises and right to hold interviews or other communication with persons deprived of liberty, to publish the findings and submit recommendations to relevant authorities, belongs also to the Office of Public Defender of Rights. Given some critical findings of the Public Defender of Rights in relation to certain detention premises and conditions hereto, especially during the first hours of restriction of liberty, the ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establishing of the National Prevention Mechanism as a result of accession to this instrument, would certainly contribute to strengthening of independent and professional oversight, and rising of the existing standards.

173. As for the existence and maintenance of the official records and registers of persons deprived of liberty, required by Art. 17 (3) of the Convention, it can be noted that any situation of restriction or deprivation of liberty by official authorities of the state must be recorded in the appropriate register of detainees, which is available to judicial authorities at all times. This includes the registers of the Police Force that record all information in relation to specific crimes and persons both at investigation and prosecution stage of the criminal proceedings. As a minimum, the police record must contain the identity of the person, whose liberty has been restricted, the qualified reason, place, time and date when the restriction was imposed, and the time and date when the person was released, together with the authority and/or the decision on the basis of which the release took place.

174. Further information is required by the Prison Regulations that include more detailed personal identification with fingerprints and photograph, which are also used on any transfer or release. The personal record is created for each inmate upon the arrival, containing all relevant information and events in chronological order, during time of his or her imprisonment. This typically includes information on state of health and/or provision of health-care, individual employment, educational and other such plan for social reintegration

and personal development, and all records of disturbing events such as violent incidents, granting of rewards and imposition of preventive or disciplinary measures, modification of penalty or systemic transfer of such kind, as well as any physical transfers or changes — with precise dating, responsible authorities, and description of reasons and outcomes.

175. The event of serious bodily harm or death, as mentioned in Art. 17 (3g) of the Convention, would certainly be subject to creation of the official record — containing basic information on investigation of the event, responsibility-determination and official reasoning as for the circumstances, cause of death and the destination of the remains. In such cases, the highest authorities of the General Director of Prison Corps and the Minister of Justice are automatically informed.

Article 18

Information on persons deprived of liberty

176. Access to information of persons with legitimate interest — such as relatives and legal representatives or counsels of persons deprived of liberty, concerning their whereabouts, date, time and place where the person has been deprived of liberty, the responsible and supervising authority, information on state of health, accidents, transfers and release, is in context of authority of the Police Force provided for by Section 19 (6) of the Police Force Act, and in context of criminal procedure by Section 74 of the Code of Criminal Procedure on Notification on the Remand in Custody, on the Release and on the Escape from Custody, pursuant to which a notification on the remand in custody issued by a court or a judge in the pre-trial proceedings shall be served without delay to a relative of the accused or another person designated by the accused, and to his defence counsel.

177. Official registers described in relation to the previous Article 17 of the Convention, are generally available to competent judges and courts and to the Public Prosecution Office. Public Prosecution is also the main supervising authority in respect to Art. 18 (1c) of the Convention, with other bodies such as the National Council of the Slovak Republic, the General Director of the Prison Corps and the Minister of Justice, already listed in relation to Article 17 of the Convention. This is, among other, legislatively rooted in Sections 59 and 60 of the Custody Execution Act and Sections 96 and 97 of the Imprisonment Act.

178. Section 8 of Custody Execution Act and Sections 8 and 10 of the Imprisonment Act guarantee that the whereabouts of the person deprived of liberty, including in the event of transfer, are communicated to persons with legitimate interest. Inmates therefore have the right to inform their family and their defence attorney or legal counsel of the detention and in case of a transfer to different prison establishment, of their arrival and necessary details of the new placement and location. They are also permitted to communicate on a regular basis — in person, via telephone and in writing with their family members and official representatives of organisations or authorities entitled to have access to prisons, such as representatives of church or the Public Defender or Rights (Office of the Ombuds(wo)man).

179. Inmates' communication with their attorneys or defence counsels and legal representatives shall take place in spaces provided specifically for this purpose, with guarantee of privacy.

180. In case of serious accident, illness, bodily harm or death, the director of the prison establishment shall inform the close relative or a person designated as such, by the inmate. The inmate, on the other hand, shall be informed of the death, serious illness or other serious event of a close relative or other persons of family or close relationship (Sections 16 (4) and 58 of the Custody Execution Act, and Sections 31 (4) and 95 of the Imprisonment Act.

181. In the context of consular protection, Article 36 of the Vienna Convention on Consular Relations provides for the duty of the competent authorities to inform the consular post of the sending state if a national of a foreign state is arrested or committed to prison or to custody. Slovak authorities therefore forward any communication addressed to the consular post by the foreign national placed in prison, custody or detention without delay. They also have the duty to inform the person concerned without delay of her rights, as well

as of the right of consular representative to visit their national in prison, custody or in detention, to communicate with them, and to arrange for their legal representation.

Article 19

Protection of personal data

182. Protection of personal information, including medical and genetic information collected and/or transmitted for the purpose of search for a disappeared person, or by extension — to exercise the right to obtain reparation, shall not be used otherwise, with a view to prevent any infringement of human rights and dignity of the concerned individual.

183. The obligation stipulated hereto, is in line with the standard constitutional guarantee of Articles 19 and 22 of the Constitution that provide for protection of human dignity, personal honor, reputation and good name, including unauthorized collection, publication or other misuse of personal data. This is further elaborated in Act No. 122/2013 Coll. on Protection of Personal Data and on amendment and supplements to certain laws (the Data Protection Act) as well as Act No. 417/2002 Coll. on the Application and Usage of the DNA Analysis for the Purpose of Identification of Persons, that determines the aim and purpose of collection and further usage of the samples and corresponding personal information, the scope of collected information, the circle of concerned persons, security and protection of data stored in a database, and provision and disposal of collected information. The new legislation regarding personal data protection — Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) effective on 25.05.2018 and Act no. 18/2018 Coll on Personal Data Protection and on amendment and supplements to certain laws shall more precise the rules of processing above mentioned personal data.

184. Pursuant to the Data Protection Act, as well as future legislation — GDPR and Act no. 18/2018 Z. z., the DNA database is an information system, that requires and enjoys all security standards to protect the contained personal data necessary for efficient conduct of criminal proceedings — including disclosure of perpetrators, search for the missing persons, identification of victims, identification of persons whose identity is unknown, that might as well extend towards identification of persons who might have been a victim of crime of enforced disappearance.

185. It is the Ministry of Interior of the Slovak Republic that is entrusted both with the management and the official oversight of the above mentioned National Database of DNA Profiles (CODIS), that is subject to Ordinance of the Ministry of Interior No. 164/2013 on Protection of the Personal Data, and registration with the Office of the Control and Inspection Service of the Ministry of Interior, under the registration number 0000226. Responsibility for the quality and security of the information stored in the National Database of DNA profiles (CODIS) is entrusted with the Institute of Criminalistic Expertise that acts as a gestor.

186. As a general rule, the collection and processing of personal and other data by any relevant authorities is allowed only to the extent necessary for the purpose of performing relevant tasks. With respect to protection of data in investigation, criminal or judicial proceedings, where the interests of these is to keep the information secret for reasons of public order, protection of morals, personal and family life, protection of human dignity and fundamental rights of the victim, the injured party, the accused or other persons — authorities acting in the official capacity must respect the strict confidentiality and protection of personal facts or data they have come across when fulfilling their obligations, being aware that a disclosure of these represents a violation of human rights and may even constitute a criminal offence.

Article 20

Restrictions to the right to information

187. Methods and scope of provision of information concerning criminal proceedings, including possibility to keep certain information secret or strictly confidential, or to restrict its usage and provision, are generally regulated in Section 6 of the Code of Criminal Procedure. Sub-sections of 6 (2) and 6 (4) of the Code of Criminal Procedure regulate situations when fundamental rights and freedoms of persons may be, in cases permitted by law, interfered with to the extent necessary to achieve the purpose of criminal proceedings with due respect to the dignity of persons and their privacy.

188. This explicitly includes presumption of innocence of the accused, as well as protection of the personal data and information relating to private and family life, domicile and correspondence that has no direct relation to the criminal acts. Special attention shall be paid to the rights and best interest of children, minors of age and the victims or injured persons, whose personal data or information shall not be publicised.

189. In accordance with Article 20 (2) of the Convention, Article 46 of the Constitution and other laws of the Slovak Republic provide that everyone has the right to judicial or legal remedy when his or her rights or legitimate interests are at stake. This applies to the right to access to information and the right to a remedy in case of illegitimate restriction of this right, in case of persons with legitimate interest in relation to victims or persons who might have been subject to crime of enforced disappearance.

190. The legality of any measures, including the above mentioned restriction, may be challenged through supervisory role of the Public Prosecution, provided for by Section 230 of the Code of Criminal Procedure as well as the Public Prosecution Act, stipulating the key role of Public Prosecution in protection of fundamental rights and systemic, general oversight of legality.

Article 21

Release of persons

191. In addition to relevant provisions of the Code of Criminal Procedure, release from custody, including details as for verification of identity of the released person and recording duties of the releasing authority, are regulated in Section 57 of the Custody Execution Act and Section 55 of the Ordinance of the Ministry of Justice of the Slovak Republic No. 437/2006 Coll. on Rules of Execution of Custody.

192. Rules and measures related to imprisonment are set forth by the Imprisonment Act, from the arrival and official receipt of a convict or inmate described in Section 7 of the Imprisonment Act, through transfers described in Section 10, to the Part Five — Section 94 and the following the Imprisonment Act — of the instant law, dealing with the release of persons.

193. As much as upon arrival and receipt a court decision must exist to the effect of execution of penalty of deprivation of liberty, identity of the inmate must be clearly established, verified and properly recorded, health-check conducted, redundant or dangerous personal things of the inmate placed in the deposit, and the inmate be informed of his rights and duties, the release of a person shall be also based on a decision terminating imprisonment or detention, followed by an order for law enforcement forces (Prison Guards), to release the inmate or detained.

194. Precise and verified personal identification, medical examination with a record ascertaining the person's health status at the time of release, and handing in the deposited personal items and money, form an integral part of the release procedure.

195. Before the release, the personal situation and capacity to lead an independent life after the release from prison of the released person shall be subject to consideration for the necessary assistance by local authorities, cooperating organisations or social welfare.

196. In accordance with internal rules for enforcement of prison sentences, the departments or officers responsible for admission, release and records of sentenced persons have to verify whether the release procedure was carried out in accordance with the law, providing a written report to this effect, which is filed with the personal record or dossier of the concerned person.

197. As part of the release procedure, the sentenced person is granted a release decree, confirming the act of release. The competent court and the local administrative authority, which has territorial jurisdiction over the place of domicile or residence of the now-released person are informed to this effect.

198. The legality of the above steps and measures may be also challenged, as mentioned in relation to Article 20, through supervisory role of the Public Prosecution, as well as — in relation to Prison Corps, by the General Director of the Prison Corps or the Minister of Justice.

Article 22

Obstruction and failure to justice

199. Professional or systemic failure of responsible authorities both in relation to Art. 17 (2f) and Art. 20 (2) of the Convention and broadly conceived, may constitute a basis for Criminal Offences Committed by Public Officials under Sections 326 and 327 of the Criminal Code — Abuse of Power by a Public Official, when the intention of causing damage to another or obtaining undue benefit for himself or another through exercise of his powers or legal authority in an unlawful manner, or failure to fulfil a duty resulting from his legal authority or from a court decision, can be established; and Neglect of Duty by a Public Official when an official who, in the execution of his powers, fails to fulfil an important task by negligence.

200. In context of Police Force, the Act No. 73/1998 Coll. on State Service of Members of the Police Force, Slovak Information Service, Prison Corps of the Slovak Republic and Railway Police (the Act on State Service of Police Force Members), assigns personal responsibility of these for violation or failure to perform their professional duties or in direct relation to their duties prescribed by law. Concrete responsibilities of police is set out in Section 48 (3) of this Act, pursuant to which police officers are obliged to perform their duties imposed on them by Constitution, constitutional laws, laws and other generally binding regulation, and also duties imposed by commands, regulations, orders and directives of superiors, thoroughly. Delaying or obstructing the remedies in relation to violation of rights, including the rights of victims, relatives and other persons with legitimate interest in the destiny and rights of persons subject to crime of enforced disappearance, failure to record the deprivation of liberty of any person, or recording relevant information and/or failure to refuse to provide information on the deprivation of liberty of a person, or provision of false or inaccurate information in this respect would mean breach of duties.

201. Furthermore, it is necessary to mention that pursuant to Section 78 of the Police Force Act the state is liable for damages caused by Police Force or policemen in connection with performance of duties prescribe by this law.

202. Core sanctions in relation to such failure, constituting the above mentioned crimes, depending on circumstances, oscillate between two and five years of imprisonment. These can rise to four and ten years, when the public official acts in a more serious manner, violates the rights of a vulnerable or protected person, and even a term of imprisonment of seven to twelve years may be imposed in cases of proved intention to prevent or obstruct the exercise of fundamental rights and freedoms, or in cases causing the victim grievous bodily harm or death. Should the above conduct take place in times of a crisis and/ or harm several persons, as various situations around the world proved in relation to crime of enforced disappearance, imprisonment of ten to twenty years shall apply.

203. In addition, failure to report a criminal offence, failure to report a criminal offence, interfering with judicial independence and obstruction to justice — as obstructing of

activities of an investigator, prosecutor, judge, lawyer, expert, interpreter or other persons and authorities in performing their duties in relation to criminal investigation or proceedings, defined in Sections 340 to 344 of the Criminal Code, establish specific offences, to which criminal liability and penalties of imprisonment between three to up to eight years apply.

Article 23

Training of the competent authorities

204. The professional education and training — both at pre-employment/service and during the employment/service in the form of continuing or life-long training, is in fact a requirement for law enforcement, judicial, prosecutorial, medical and other relevant personnel, prescribed by laws and internal instructions regulating each respective profession.

205. Representative of these also have specialised professional training and educational institutions, such as the Academy of the Police Force focused on police, investigators and law enforcement staff, and the Judicial Academy with the target group of judges and prosecutors as well as judicial, prosecutorial and notarial trainees — i.e. lawyers preparing for a specialised judicial, prosecutorial or notarial examination.

206. These institutions, in cooperation and dialogue with the respective professions, prepare and publish annual plan of training and educational activities open to interested individuals. Despite a broad range of topics, including investigative methods, humanitarian law, specific types of criminality such as organised crime, crimes of extremism or hate crime, specific trainings focused on criminal offence of enforced disappearance have not been organised.

207. This may be, among other, due to two reasons — a rather abstract perception of crime of enforced disappearance, as a “non-existent crime” in context of the Slovak Republic, as well as lack of corresponding know-how, rooted in reality. If available — perhaps in the form of foreign or international training module, developed by experts and tested in countries or environments, for which this type of crime has been a part of criminal, criminological and social reality, it may be, as well, of interest elsewhere. Any such initiatives of the Committee or the state parties to the Convention, might therefore play a positive role in promoting awareness and necessary knowledge in relation to prevention and universal elimination of enforced disappearances in the Slovak Republic and around the globe.

208. As for obligation set forth in Art. 23 (2) of the Convention, orders and instructions authorising or encouraging any criminal act and/or violation of human rights of others, including enforced disappearance, are strictly prohibited. Exclusion from professional, military, administrative and other hierarchical chains of command or professional responsibility forms an integral part of Slovak criminal law mainly through Section 28 (2) of the Criminal Code. This provides that in the exercise of rights and performance of duties, no exclusion from criminal liability may be claimed on the basis of fulfilment of duties, order, instruction, imperative or a guideline of a public authority, public official or a superior, in cases of the most serious crimes, such as crime of genocide and brutality — defined in section 425 of the Criminal Code as an act against civilian population that is deemed to be a crime against humanity under Article 7 of the Rome Statute of the International Criminal Court.

209. At the same time, partial laws such as the Act on State Service of Police Force Members, in its Section 48 (4) also sets forth a right of the subordinate to refuse an order, on legality and nature of which s/he has serious doubts, and a duty to inform his or her superiors in further hierarchical line, and/or the relevant public authorities, to this effect. The same rule applies in the context of the military, pursuant to Section 132 (2 and 3) of the Act No. 281/2015 Coll. on State Service of the Professional Military Personnel and on amendment and supplements to certain laws.

Article 24

Rights of the victims

210. The definition of a victim of a crime in the Slovak Republic is relatively broad, including any person who has suffered physical, material, moral or other harm, or whose fundamental or legally protected rights have been violated or threatened, as a result of a crime, including the crime of enforced disappearance.

211. The newly adopted Victims Act that came into force on 1 January 2018, considers as victims in its Section 2 (1b) persons directly harmed, their relatives, close persons or persons in relation of dependence. As a general rule, pursuant to Section 3 (1) of this Act, everyone who declares himself to be a victim of a crime, is to be perceived so, unless the opposite is proven.

212. Vulnerable victims are listed under Section 2 (1c) of the Victims Act and include children, seniors older than 75 years, persons with disabilities, victims of organised crime, human trafficking, domestic violence, crimes of terrorism and crimes against human dignity, as well as victims of crimes committed in relation to victim's identity, such as sexual orientation, race, nationality or ethnic origin, religious, social or other belonging.

213. The authorities have an obligation to inform the victim of her rights, which are further stipulated in Part Two of the law, with the right to information on relevant circumstances and details of her matter under Section 4. This provision would certainly include the right to know the truth about enforced disappearance, and the fate of the disappeared person, and the right of victim to be informed on the progress and results of investigation as well as the right to participate in the proceedings.

214. These rights, including the right to make suggestions, to present evidence and to participate in the main court proceedings, are explicitly secured by Section 46 of the Code of Criminal Procedure — dedicated to persons who have suffered harm, i.e. the injured or harmed person.

215. Before the adoption of the Victims Act — that transposed the Council Directive 2004/80 from 29 April 2004 on Compensation of Victims of Criminal Offences, and the Directive of the European Parliament and the Council 2012/29/EU from 29 October 2012 on Minimum Norms on Rights, Support and Protection of Victims of Criminal Offences, the rights of victims in the Slovak Republic have been in fact regulated only through provisions of Sections 46 to 49 of the Code of Criminal Procedure, in combination with the Act No. 215/2006 Coll. on Compensation of Persons Harmed by the Criminal Offences (the Compensation Act), that provided for one-time financial compensation of persons, who as a result of crime, suffered health or bodily harm. With the introduction of new law, the validity of the above Compensation Act expired.

216. The right to compensation, its nature and scope are now regulated in Section 9 and Part Three of the Victims Act with the highest possible amount of financial compensation accounting to fifty minimum salaries. In addition, the principle that along the compensation provided by the state, a victim of crime may, as well, claim additional damages in civil proceedings, applies pursuant to Sections 46 (3) and 46 (4) of the Code of Criminal Procedure. This codex, in its Section 48 (4) also provides for succession of right to compensation to the descendants, and for establishment of a legal guardian in cases concerning rights of minors of age, persons with limited legal capacity, missing or disappeared persons, or anyone in a position of a victim or a harmed person who is not in a position to exercise their rights. The overall legal situation of a disappeared person in other relevant fields, such as civil and family matters, social welfare and property rights, would also most likely be resolved through establishment of a legal guardian. Pursuant to Section 29 of the Law No. 40/1964 the Civil Code as amended, the court may appoint a curator to a person of unknown residence if it is necessary for protection of his or her rights or if it is required by a public interest.

Article 25

Protection of children

217. The wrongful removal of children in context of crime of enforced disappearance represents the most serious violation of human rights, and has therefore been fully transposed into Slovak diction of crime of enforced disappearance, under paragraph 3 of the section 420a of the Criminal Code as follows:

“The penalty of ten to fifteen years of imprisonment shall apply to anyone who

(a) unlawfully removes a child that was subject to enforced disappearance, or a child born during the captivity of a mother subject to enforced disappearance,

(b) unlawfully removes a child of a parent or a guardian subject to such crime,

(c) falsifies, conceals or destroys the documents attesting the true identity of a child defined under the letters (a) or (b).”

218. Protection of the rights of a child as well as protection of motherhood, parenthood, family and family life in Slovakia is guaranteed by an elaborate and relatively detailed legislative framework. On a Constitutional level, Articles 38 and 41 are explicitly dedicated to special protection of minors of age, and of family, with strong focus on the relationship between parents and children.

219. Consequently, the Act No. 36/2005 on Family and on amendment and supplements to certain laws (the Family Act) in its Section 3 clearly recognises the high value of parenthood as well as corresponding legal entitlement to family support from the state. The best interest of the child as the main principle in every decision-making concerning children, is enshrined in Art. 5, with specific provisions of 5g) and Section 43 (1) of the Family Act on the right of the child to express their views and to have their views heard and respected.

220. The entire Part Four, Section 97 and the following, of the Family Act deals with issues of parenthood and adoption, requiring a written consent of biological parents confirmed by court, and providing for other guarantees to secure that the adoption of a child, or a child of the parents who might have been the victims of enforced disappearance, in the Slovak Republic or elsewhere, would not be possible. In addition, due to Section 106 (3) of the Family Act, the adopted child has a right to obtain information about his parents, unless such information can cause him harm.

221. International adoptions, whether from the Slovak Republic abroad, or from another signatory country to the Slovak Republic, is subject to conditions of The Hague Convention on the Protection of Children and Cooperation in Inter-Country Adoption from 29 May 1993, transposed through Notification of the MFA No. 380/2001 Coll., and practically realised by the Centre for the International Protection of Children, a specialised centre of the Ministry of Labour, Social Affairs and Family, as the national contact point in relation to The Hague Conventions on International Family Law.

222. In cases of crisis or failure of natural family environment of a child, the necessary support is provided by the state, in individualised and adequate forms, according to Law. No. 305/2005 Coll. on Socio-Legal Protection of Children and Social Care and on amendment and supplements to certain laws (the Act on Socia-Legal Protection of Children). The best interest of a child, as a guiding principle, is expressed in Section 1 (2a), with direct link to the UN Convention on the Rights of the Child. Due to Section 7 of the Act on Socia-Legal Protection of Children, everyone has a legal obligation to alert the relevant authorities, if s/he has knowledge of a neglect or a violation of the rights of a child. At the same time, every child has a right to ask for vital assistance.

223. Failure to protect, respect and fulfil children’s rights, or a violation of these, may create a basis for relatively many criminal offences. Trafficking in children as placing of a child under the control of another for the purpose of adoption or obtaining of a profit, exploitation of the child for child labour or any other purpose, is defined in Sections 180 and 181 of the Criminal Code, followed by battering of a close person or a person entrusted

into one's care, including ill-treatment of children, causing them physical or mental suffering (Section 208 of the Criminal Code), kidnap — as taking a child from the legitimate care, or care arising from an official decision (Section 209 of the Criminal Code), abandonment of a child by a person who has a legal obligation to take care of the child, who is not yet able to seek assistance, putting the child in danger of death or bodily harm (Section 206 of the Criminal Code) and neglect of compulsory maintenance of a dependent person — as negligence of one's statutory duty to provide alimony or other support to a dependent person, for at least three months in the period of two years shall (Section 207 of the Criminal Code).

224. In relation to provision of Article 25 (1b) of the Convention, concerning falsification, concealment and or destruction of documents attesting the identity of children, such as their birth certificate, that is issued to every child born in the Slovak Republic, as well as required independent travel document in case of trans-boundary movement of a child — the crime of counterfeiting or altering of a public document, official seal, emblem or a mark — listed in Section 352 of the Criminal Code, would apply, with further possibility of criminal liability in already-described contexts of the abuse of power by public officials, depending on particular circumstances.

225. As of 2015, this legislative framework has been further strengthened by establishment of a specialised Office of Defender of Children's Rights, by Act No. 176/2015 Coll. on Commissioner for Children and Commissioner for Persons with Disabilities and on amendment and supplements to certain laws, as independent monitoring bodies in relation to the rights of these vulnerable groups. Due to the Defender's annual and special reports, as well as the official statistics of Slovak authorities, no occurrence of child victims, neither children who would have any relation to the victims of crime of enforced disappearance, has been recorded.

IV. Conclusion

226. Since ratification of the Convention in December 2014, the Slovak Republic has not investigated, registered, decided over or punished a perpetrator of criminal offence of enforced disappearance. Despite this fact, the importance of the Convention for securing and strengthening of general guarantees of fundamental rights and freedoms in the Slovak Republic and other countries, including those where enforced disappearance is not a usual part of the social and criminal reality, is fully recognised.

227. With the submission of this initial report, the Slovak Republic enters into a dialogue with the Committee on Enforced Disappearances, whose work and expertise are highly respected, with expectation of constructive reflection and identification of possibilities for further improvement of our existing legal, institutional and application framework, with a view to effectively contribute to prevention, combatting and elimination of crime of enforced disappearance, as envisaged by the Convention.