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Committee on Enforced Disappearances**Concluding observations on the report submitted by Slovakia under article 29 (1) of the Convention**

1. The Committee on Enforced Disappearances considered the report submitted by Slovakia under article 29 (1) of the Convention (CED/C/SVK/1) at its 299th and 300th meetings (see CED/C/SR.299 and 300), held on 2 and 3 October 2019. At its 309th meeting, held on 10 October 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Slovakia under article 29 (1) of the Convention, which was prepared in accordance with the reporting guidelines, and the information contained therein. The Committee also appreciates the constructive dialogue with the delegation of the State party on the measures taken to implement the provisions of the Convention, which has dispelled many of its concerns, and particularly welcomes the openness with which the delegation responded to the questions raised by the Committee.

3. The Committee thanks the State party for its written replies (CED/C/SVK/Q/1/Add.1) to the list of issues (CED/C/SVK/Q/1), which were supplemented by the oral responses provided by the delegation during the dialogue, and for the additional information provided in writing.

B. Positive aspects

4. The Committee commends the State party for becoming a party to almost all of the United Nations core human rights instruments and their optional protocols, as well as the Rome Statute of the International Criminal Court.

5. The Committee welcomes the fact that the State party has recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention.

6. The Committee notes with satisfaction the information provided by the State party that, in accordance with the Slovak Constitution, the Convention is an inherent part of its domestic legislation and thus directly applicable.

7. The Committee welcomes the legislative measures adopted by the State party in matters related to the Convention, in particular the following provisions of the Criminal Code:

(a) Section 420 a, which criminalizes enforced disappearance in line with the definition contained in article 2 of the Convention; establishes the criminal responsibility of superiors in cases of enforced disappearance; criminalizes the wrongful removal of children and the counterfeit, concealment and destruction of documents attesting the true identity of

children subjected to wrongful removal; and establishes aggravating circumstances for enforced disappearance when the crime is committed against a vulnerable or protected person or causes a serious bodily harm or death;

(b) Section 28 (2), which establishes that there is no exemption from prosecution for acts of enforced disappearance even when perpetrated inter alia under a public authority's decision;

(c) Section 88, which establishes that the statute of limitation does not apply to the criminal offence of enforced disappearance.

8. The Committee also welcomes the affirmation by the State party that the phrase "thereby makes for them impossible to exercise legal protection" that is included in the definition of enforced disappearance contained in Section 420 a (1) of the Criminal Code "shall be interpreted as a consequence of a perpetrator's conduct" (CED/C/SVK/Q/1/Add.1, para. 15).

C. Principal subjects of concern and recommendations

9. The Committee appreciates the measures taken by the State party so far to comply with the provisions of the Convention. The Committee calls upon the State party to implement its recommendations, which are made in a constructive spirit of cooperation, in order to ensure that the Convention is fully implemented de jure and de facto.

General information

National Human Rights Institution

10. The Committee observes with concern that the Slovak National Centre for Human Rights (NCHR) is not yet in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). While noting with appreciation that the budget of the NCHR was recently increased by 40% and that its personnel was also increased with seven additional employees, the Committee regrets that the legislative reform to improve the normative framework of the NCHR proposed by the Government did not receive the necessary support in the National Council of the Slovak Republic. In this respect, the Committee notes with interest that a reform proposal will again be submitted to the National Council next term.

11. The Committee recommends that the State party continues and steps up its efforts to bring the Slovak National Centre for Human Rights into full compliance with the Paris Principles, in particular by swiftly adopting the legislative reform necessary to improve its normative framework.

Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8-15)

Jurisdiction

12. The Committee takes note of the information provided by the State party on applicable legislation concerning the jurisdiction of Slovak courts, including of Section 7 (1) of the Criminal Code which guarantees criminal liability when it is prescribed by an international treaty that is binding for the State party. However, taking into consideration Section 6 of the Criminal Code, it is not clear for the Committee whether, in line with article 9 (2) of the Convention, national courts would be competent under domestic law to exercise jurisdiction over the offence of enforced disappearance when the alleged offender who is a foreign national and does not have a permanent residence status in the Slovak Republic is present in its territory, he/she is not extradited, and the country where the enforced disappearance was allegedly perpetrated does not specifically criminalize enforced disappearance (art. 9).

13. **The Committee recommends that the State party ensure that no conditions which are not provided for in the Convention, such as double criminality, affect the exercise of jurisdiction by the Slovak courts in conformity with article 9 (2) of the Convention. In addition, the Committee encourages the State party to consider incorporating enforced disappearance (Section 420a of the Criminal Code) into the list of offences contained in Section 5a of the Criminal Code, which represents the basis for universal jurisdiction.**

Measures to prevent enforced disappearances (arts. 16-23)

Non-refoulement

14. The Committee takes note of the information provided by the State party on existing legislation in the fields of extradition and expulsion to ensure respect for the principle of non-refoulement, though it observes that no specific reference is made to enforced disappearance. The Committee also notes that a court's decision on the admissibility of a request for extradition can be appealed to the Supreme Court. However, it is concerned that the Minister of Justice's decision to carry out the extradition, after considering the risks in the requesting State, is final and cannot be appealed. Furthermore, the Committee is concerned that the application of the principle of non-refoulement is discretionary in cases when the person concerned is considered dangerous for the security of the State party or has been convicted for a particularly serious felony and is a threat to the State party (art. 16).

15. **The Committee recommends that the State party ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly respected in all cases and without exceptions. In this respect, the Committee recommends that the State party:**

(a) Consider explicitly incorporating into its domestic legislation a prohibition on carrying out an expulsion, refoulement, surrender or extradition when there are substantial grounds for believing that the person concerned may be in danger of being subjected to enforced disappearance;

(b) Ensure that any decision taken in the context of procedures of expulsion, refoulement, surrender or extradition evaluating the risk of a person being subjected to enforced disappearance can be appealed and that such appeal has suspensive effect;

(c) Guarantee that respect for the principle of non-refoulement is not subject to any conditions.

Fundamental legal safeguards

16. The Committee is concerned about information of some instances in which persons deprived of their liberty have not been afforded all fundamental legal safeguards from the outset of the deprivation of liberty, in particular access to a lawyer and to communicate the deprivation of liberty to their family or any other person of their choice. In addition, the Committee is concerned that, under Section 34 of the Code of Criminal Procedure, law enforcement authorities shall not notify a relative of a person deprived of liberty or another person of their choice when the information can frustrate the clarification and the investigation of the case. In addition, the Committee welcomes the information provided by the State party concerning efforts made to ensure that all deprivations of liberty are properly recorded (arts. 17-18).

17. **The Committee recommends that the State party adopt the measures necessary to ensure in practice that all persons deprived of liberty are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided under article 17 of the Convention, in particular access to a lawyer and to notify their relatives or any person of their choice of the deprivation of liberty and of the place where the person is being held. The Committee also recommends that the State party review Section 34 of the Code of Criminal Procedure to ensure that it is fully compliant with the Convention.**

Inspection of places of deprivation of liberty

18. While noting that the Office of the Public Defender of Rights can inspect and monitor public places of deprivation of liberty and make recommendations to relevant authorities, the Committee observes that no specific mechanism has been established to carry out regular visits to all the places where persons deprived of liberty may be held. In addition, the Committee observes that the State party has signed but not yet ratified the Optional Protocol to the Convention against Torture (OPCAT) and takes note that the Ministry of Justice is elaborating the necessary legal analysis along with a proposal for the creation of a national preventive mechanism prior to proceeding to the ratification. The Committee considers that the ratification of OPCAT as well as the establishment of a national preventive mechanism in accordance with its provisions could be instrumental in preventing enforced disappearances and other violations of the rights and obligations contained in the Convention (art. 17).

19. The Committee recommends that the State party establish a specific independent mechanism with the power to undertake, without hindrance, regular unannounced visits to all places where persons may be deprived of liberty, irrespective of their nature. In this respect, the Committee encourages the State party to speed up the process aimed at ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to swiftly establish a national preventive mechanism that is in full conformity with it.

Access to information by persons with legitimate interest

20. The Committee notes with concern that the definition of “close person” contained in Section 116 of the Civil Code provided by the State party to make reference to the persons who could have access to information in the terms of article 18 of the Convention is restrictive and that the requirement for persons other than direct relatives to be considered “close” may be difficult to demonstrate. Nonetheless, the Committee notes with interest the affirmation by the State party that, in practice, persons deprived of liberty can communicate with close persons and that their choice is not questioned by relevant authorities (art. 18).

21. The Committee recommends that the State party takes the measures necessary to ensure that any person with a legitimate interest can have prompt and easy access to at least the information listed in article 18 (1) of the Convention. In addition, the Committee encourages the State party to review its definition of close person so as to bring it in line with article 18 (1) of the Convention.

Training

22. The Committee observes that the State party does not provide specific and regular training on the Convention and the crime of enforced disappearance. While taking note of the possible reasons presented by the State party for the lack of specific training, including the lack of experts who can provide it, the Committee recalls that article 23 (1) of the Convention sets an obligation on States parties to ensure that training of relevant public officials includes the necessary education and information regarding relevant provisions of the Convention. In this respect, the Committee welcomes the interest expressed by the State party to receive support in relation to training on enforced disappearances (art. 23).

23. The Committee recommends that the State party ensure that all law enforcement and security personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof. In addition, the Committee encourages the State party to provide training to judges on the offence of enforced disappearance, in particular to ensure its proper application and that the phrase “thereby makes for them impossible to exercise legal protection” contained in Section 420 a (1) of the Criminal Code is always considered as a consequence of the constitutive elements of the offence of enforced disappearance rather than an intentional element.

Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

Right to reparation and prompt, fair and adequate compensation

24. The Committee takes note of the different systems to obtain compensation in the State party. However, it is concerned that domestic law does not fully guarantee the right of victims of enforced disappearance to obtain adequate compensation and all forms of reparation provided for in article 24 (5) of the Convention under the responsibility of the State. In particular, the Committee is concerned at the restrictions to the right to compensation contained in the Victims Act, including: (a) compensation would not be awarded to all victims of enforced disappearance, for instance to non-nationals when the crime was perpetrated abroad by or with the involvement of Slovak State agents or to victims who refuse to give their consent for the start of criminal proceedings; (b) compensation for moral damage would not be provided to victims of enforced disappearance; and (c) compensation claims should be presented after the decision in criminal proceedings entered into force and under the condition that the victim applied for compensation in criminal proceedings before the completion of the pre-trial stage (art. 24).

25. **The State party should guarantee the right to reparation and to prompt, fair and adequate compensation of all persons who have suffered harm as a direct result of an enforced disappearance, regardless of their nationality. To this effect, the Committee recommends that the State party adopt the necessary measures, including the revision of the Victims Act, to guarantee that its domestic legislation provides for a comprehensive system of compensation and reparation that is fully compliant with article 24 (4) and (5) of the Convention and other relevant international standards; for which the State is responsible and is applicable even if no criminal proceedings have been initiated; and that is sensitive to the victims' individual characteristics, taking into account, for instance, their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability.**

Legal situation of disappeared persons whose fate has not been clarified and that of their relatives

26. The Committee considers that the system governing the legal situation of disappeared persons whose fate has not been clarified does not accurately reflect the complexity of enforced disappearance. In particular, it is concerned that, under the Civil Non-Dispute Code, a person can be declared dead if his/her whereabouts are unknown for "a substantial amount of time" and the "investigation in criminal proceedings did not provide any additional information on the whereabouts" (CED/C/SVK/Q/Add.1, para. 87). The Committee reiterates its position that, in view of the continuous nature of enforced disappearance, in principle and unless there is concrete evidence to the contrary, there is no reason to presume that a disappeared person has died so long as his or her fate has not been clarified. While taking note that a legal guardian can be appointed to protect the interest of disappeared persons, the Committee regrets not receiving sufficient information about the legal situation of disappeared persons and that of their relatives in fields such as social welfare and family law (art. 24).

27. **In the light of article 24 (6) of the Convention, the Committee recommends that the State party adopt the measures necessary to review its domestic legislation in order to ensure that it deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in fields such as social welfare, financial matters, family law and property rights, without having to declare the disappeared person dead. In this respect, the Committee encourages the State party to set up a procedure to obtain a declaration of absence as a result of enforced disappearance.**

D. Dissemination and follow-up

28. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments.

29. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

30. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention and the present concluding observations in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the actions taken in line with the present concluding observations.

31. In accordance with the Committee's rules of procedure, the State party is requested to provide, not later than 11 October 2020, information relevant to the implementation of the Committee's recommendations contained in paragraphs 11 (National Human Rights Institution), 23 (Training) and 25 (Right to reparation and prompt, fair and adequate compensation) of the present concluding observations.

32. Under article 29 (4) of the Convention, the Committee requests the State party to submit, by no later than 11 October 2025, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention (see CED/C/2, para. 39). The Committee encourages the State party to promote and facilitate the participation of civil society in the preparation of this information.
