

## WGEID Questionnaire

### **Study on Standards and Public Policies on Effective Investigation on Enforced Disappearances**

#### **SLOVAKIA**

1. Pursuant to the Constitution of the Slovak republic, the definition of enforced disappearance contained in the International Convention for the Protection of All Persons from Enforced Disappearance has become an integral part of national legislation following ratification of the Convention. 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. In addition, the actual diction of Section 420a of the Penal 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:

(1) 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.

(2) Equal criminal responsibility and punishment 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 defined in paragraph 1

b) exercised effective responsibility for and control over activities concerning the crime defined in paragraph 1

c) failed to take all necessary and adequate measures within his power to prevent or repress the criminal act defined in the paragraph 1, or failed to inform the competent authorities for the purpose of investigation and criminal prosecution of a commission of the crime defined in paragraph 1

(3) The penalty of ten to fifteen years of imprisonment shall be imposed upon anyone who

a) unlawfully removes a child that was subject to the crime defined in the paragraph 1, or a child born during the captivity of a mother subject to the crime defined in the paragraph 1

b) unlawfully removes a child of a father, mother or a legal guardian subject to the crime defined in the paragraph 1

c) counterfeits, conceals or destroys the documents attesting the true identity of a child defined under the letter a) or b)

(4) Penalty of fifteen to twenty years shall be imposed upon an offender who commits the crime defined in paragraphs 1 or 2

a) on a vulnerable or protected person, or

b) causes a serious bodily harm or death.

**3.** According to Penal Code, upon the expiry of the limitation period the criminal liability of the criminal offences referred to in Chapter Twelve, including Section 420a, does not expire.

**4.** No person has been convicted for the crime of enforced disappearance in Slovak republic.

**5.** There are no special units in the law enforcement or prosecution authorities in charge of investigation of enforced disappearances. Investigating and prosecuting of enforced disappearances is in competence of District prosecutor's office.

**6.** The public prosecutor shall represent the State in the criminal proceedings. Unless Code of Criminal procedure or an international treaty or a decision of an international organisation by which the Slovak Republic is bound stipulates otherwise, the public prosecutor is obligated to prosecute all criminal offences of which they learn.

**7.** If a witness who was duly summoned fails to appear for the action without sufficient excuse, they may be presented. A witness may not be interrogated on circumstances relating to classified information, unless they were exempt from such obligation by the competent authority. The exemption may only be denied if State defence or national security is

compromised or there is a risk of other equally serious damage; the reasons for the denial of the exemption should always be noted. A witness may not be interrogated if their testimony could violate the law or the obligation of professional secrecy recognised or imposed by an international treaty, unless they were exempted from such obligation by the competent authority or those in whose interest such obligation lies.

**8.** A person where the criminal offence caused bodily harm, damage to assets, moral or other damage, or whose rights or freedoms protected by law were violated or threatened, is a victim. Victims are entitled to damages, to file petitions for the performance of evidence or its completion, to present evidence, to inspect and review the files, to participate in the main trial and public hearing held on an appeal or on an agreement about the confession of guilt and the acceptance of the punishment, to comment on presented evidence, and they have the right to the closing speech, and to file appeals. The victim has a right to obtain information about the progress of the criminal proceedings at any time during the criminal proceedings. The information shall be provided by the law enforcement authority or court that acts in the matter; for this purpose, the victim shall be provided with the necessary contact data. Information about the progress of the proceedings shall not be provided if the provision of such information could obstruct the purpose of the criminal proceedings. The victim has a right to be accompanied by a confidant for acts of criminal proceedings. A natural person possessing legal capacity who is chosen by the victim may be a confidant. The confidant shall provide the victim with the required assistance, especially psychological help. Due to the Victims Act, victim has also right to psychological help.

**9.** According to the Code of Criminal procedure, the judge or an associate judge, public prosecutor, police officer, probation and mediation officer, high court clerk, court secretary, assistant prosecutor and court reporter, for whom there may be doubts about impartiality due to their relationship with the case or persons who are directly related to it, to the defence counsel, legal representatives or proxies, or due to their relationship to another law enforcement authority, shall be excluded from the performance of the criminal proceedings.

**10.** 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, no crime of enforced disappearance pursuant to Art. 420a of the Penal Code and Art. 2 of the Convention has been identified, investigated or proved to have taken place

**11.** A mitigating circumstance is when an offender contributed to the elimination of detrimental consequences of the criminal offence or voluntarily compensating damages, reported the criminal offence to the competent authorities themselves or aided the competent authorities in clarifying the criminal activity.

**12.** The proceeding in the first instance shall be conducted by the District Court. The District Court in the registered office of the County Court performs proceedings in the first instance on particularly serious crimes for which the law provides a prison sentence with the lower limit of criminal penalty of at least twelve years, or if an act was committed by an organised group, criminal group or terrorist group.

**13.** No truth commission or any other truth-telling mechanism over cases of enforced disappearance have operated in Slovak republic.

**14.** The criminal liability of an act committed outside the territory of the Slovak Republic by a Slovak national or a foreign national who has been granted permanent residence in the Slovak Republic shall also be assessed under Penal Code. The criminal liability of a particularly serious crime, if the act was committed outside the territory of the Slovak Republic against a Slovak national and the act is punishable in the place of its commission or if the place of the commission of an act is not liable to any criminal competency, shall also be assessed pursuant to Penal Code.

**15.** Slovak republic is democratic country and it is it's best interest to ensure that all parties are protected against ill-treatment, intimidation or reprisal. Any act against this interest is considered as criminal offence. Whoever, in proceedings before the court or in criminal proceedings, obstructs or prevents the presence or testimony of a party to the criminal proceedings, participant to the court proceedings, or their representatives in the proceedings, witness, expert, interpreter or translator, or uses violence, threats of violence or the threat of another grievous harm, or promises, offers, or provides an illegal advantage to influence the judge, party to the criminal proceedings, participant to the court proceedings, witness, expert, interpreter, translator or the law enforcement authority shall be punished by a prison sentence of one to six years. If there is a justified concern that the disclosure of the identity, residence or place of residence of the witness will put their life, health or physical integrity at risk, or if there

is such a risk to persons close to them, the witness may be permitted not to state their personal data. However, during the main trial, they must state how they became familiar with the facts that they testified on. Materials that enable the identification of such witness shall be deposited with the public prosecution and, in proceedings before the court, with the presiding judge. They shall be entered into the file only once the threat has expired. The witness, if necessary, may even be asked questions about the circumstances relating to their credibility and also questions about their relationship to the accused or the victim. Before the interrogation of a witness whose identity must remain classified, the law enforcement authority and the court shall, if necessary in the interest of witness protection, perform measures such as in particular the change of appearance and voice of the witness, or perform their interrogation with the use of technical equipment, including devices for audio and video transmission.

**16.** Slovak republic has not adopted any specific measures in the field of international judicial cooperation to facilitate the effective investigation of transnational cases of enforced disappearance.

**17.** As written previously, since the introduction of crime of enforced disappearance into the legal system of the Slovak Republic, no crime of enforced disappearance was identified.

**18.** Slovak republic does not have any recommendations or proposals.