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PERMANENT MISSION

OF THE SLOVAK REPUBLIC

TO THE UNITED NATIONS OFFICE

AND OTHER INTERNATIONAL ORGANISATIONS

IN GENEVA

NOTE VERBALE

025153/2018-CHSM1-0008760

The Permanent Mission of the Slovak Republic to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to latter's communication No. UA SVK 1/2017 dated 28 November 2017 submitting to the Slovak Republic a joint urgent appeal by the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, has the honour to transmit herewith the Information of the Government of the Slovak Republic to the case as referred to in the above-mentioned communication.

The Permanent Mission of the Slovak Republic to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 19 January 2018



Annex: Information of the Government of the Slovak Republic to the Joint urgent appeal from the special procedures (communication No. UA SVK 1/2017 dated 28 November 2017)

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Ad point No 1 – Please provide any additional information and any comment you may have on the above-mentioned allegations.

In respect of the allegations contained in the Joint Urgent Appeal, the General Prosecutor's Office of the Slovak Republic asserts that **they are unfounded and they are based on insufficient knowledge of the issue and the evidence collected so far in the criminal cases in question, as they had been documented by the Slovak law enforcement authorities in the course of criminal proceedings.** The contents of the Joint Urgent Appeal show that it builds upon the information supplied by one side only.

The Joint Urgent Appeal has pointed out that the Public Defender of Rights in her report presenting the findings of her office's investigation concluded that in the criminal case in question, the fundamental rights and freedoms of many of individuals were violated by the police intervention of 19 June 2013 in the settlement of Budulovská in Moldava nad Bodvou and in the settlement of . In this regard, the General Prosecutor's Office of the Slovak Republic states that **the Public Defender of Rights does not have the status of a law enforcement authority, nor does she have the powers and capacities enabling her to carry out effective and fair investigation in criminal matters.**

As regards the synergies between the bodies involved in criminal proceedings and prosecution service, these law enforcement authorities have to adhere to the provisions of the Code of Criminal Procedure and other pieces of legislation that leave them no legitimate choice for providing the Public Defender of Rights with the contents of the investigation file for an objective examination of the case, except for the statutorily stipulated scope of cooperation, which indeed occurred.

In the opinion of the Constitutional Court of the Slovak Republic, based on the contested decisions of the Regional Prosecutor's Office and the decisions of an investigator of the Inspection Service, **it is obvious that, in the case at issue, all the requirements for an effective official investigation of the case had been fulfilled, what resulted in a trustworthy clarification of all its circumstances.** With respect to each and every included act, the investigator of the Inspection Service meticulously elaborated the individual factual findings that emerged from the evidence taking, and he analysed them with an emphasis put on the relevant substantive provisions of the Code of Criminal Procedure and other relevant regulations. The investigator detailed the factual findings by name to each of the injured parties, who made objections either to the harm caused to their health or to the destruction of property and unlawful entries into their dwellings, whilst he pointed out not only to the testimonies of the injured parties themselves, but evaluated them in a broader context in comparison with the statements of others, either the injured parties or the persons closed to them, as well as with the statements of other persons not involved in the case, and with other evidence that had been produced.

The prosecutor attended the interrogations and the procedures of recognition within exercising his supervisory powers and, on the part of the investigator of the Police Force and of the investigation conducted by him, **he found no biases in investigation, purposefulness of the procedures followed, hiding or ignoring the factual findings, prejudice against the injured parties or towards the case itself, interference with an investigation by his superiors, or other negative aspects that would cast doubts on transparency.**

According to the Constitutional Court of the Slovak Republic, it is obvious that the bodies involved in the given pre-trial proceedings did their utmost to clarify all the facts and circumstances of the case, and the Constitutional Court of the Slovak Republic considers that in the present case, there can be no question of ever admitting even minimum doubts as to the failure to conduct an effective investigation of the police intervention in question and subsequent procedures followed by police officers of the

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Circuit Department of the Police Force in Moldava nad Bodvou in relation to the complainants.

In connection with the independence of the Inspection Service, the Ministry of the Interior of the Slovak Republic states that, in the field of combating the crimes committed by officers of the Police Force, the leading position is held by the Inspection Service Office under the Section of the Control and Inspection Service of the Ministry of the Interior of the Slovak Republic (hereinafter referred to as "the Inspection Service"). The Inspection Service, which is one of the services of the Police Force, is materially competent to detect and investigate the crimes committed by officers of the Police Force. In terms of management, it is not subordinated to the President of the Police Force, and it is therefore independent from management and structures of the Police. The activities of the Inspection Service are governed by the Constitution of the Slovak Republic, constitutional laws, laws, other generally binding legal regulations and international treaties binding on the Slovak Republic.

Involved in the Inspection Service are also investigators who, in addition to a specific admission procedure, have to meet educational qualifications and pass the exams like any other investigator within the Police Force.

Supervision over compliance with the lawfulness of the activities of the Police Force investigators, as well as the investigators of the Police Force included in the Inspection Service in criminal proceedings, is carried out by a competent prosecutor in accordance with Section 230 of Act No. 301/2005 Coll., the Code of Criminal Procedure, as amended, namely prior to the commencement of criminal prosecution and in pre-trial proceedings. Pursuant to Act on Public Prosecutor's Service, the Prosecutor's Office is a separate hierarchically structured unified system of state bodies, headed by the Prosecutor General, in which prosecutors act in the relations of subordination and superiority. The Public Prosecutor's Office protects the rights and legitimate interests of natural persons, legal entities and the state. Within the scope of its jurisdiction, the Public Prosecutor's Office is obliged to take measures in the public interest to prevent the violation of law, detect and eliminate the violation of law, restore the violated rights and to establish responsibility for their violation. In the exercise of its competence, the Public Prosecutor's Office is obliged to use the legal means so as to ensure, without any impacts, a consistent, effective and prompt protection of the rights and legally protected interests of natural persons, legal entities and the state.

The Constitutional Court of the Slovak Republic, in its resolution, also confirmed that the conclusions adopted by the investigator of the Inspection Service and by the Regional Prosecutor's Office are based on the findings of the investigation carried out thoroughly, and that the extensive justifications of their decisions are logical, homogeneous, without internal contradictions with the rational evaluation of the secured means and the items of evidence arising out of them.

According to the Constitutional Court of the Slovak Republic, the extent of the procedural acts performed actually suggests that the bodies involved in criminal proceedings approached the clearing up of circumstances of the case in a very precise manner, and it stated that, on the contrary, the complainants in their complaint did not agree with the injunction to undergo the taking of an expert evidence of *"mental health or other qualities and personality traits of the witnesses, especially the examination of the tendencies towards deceit, confabulation, the examination of cognitive functions, level of mental and intellectual development, etc."*, which was ordered just to eliminate the contradictions found in the evidence that had been taken up to then. **The Constitutional Court of the Slovak Republic considers that the investigator of the Inspection Service moved in the right direction (definitely not in breach of law) and, for the proper clarification of the case, he took advantage of the legal opt-out of engaging an expert witness into the proceedings.**

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We conclude that the bodies involved in the given criminal proceedings, concerning the case in question, acted in accordance with existing legislation, there had not been breached any of the obligations arising out of CERD, UDHR and ICCPR, as well as out of other international treaties and declarations binding on the Slovak Republic.

Ad item No 2 – Please provide the details and where applicable the results, since 8 October 2013 (the date of response by the Government of the Slovak Republic), of any new investigation, judicial or other inquiries on the police search raid on 19 June 2013, and/or any criminal charges brought against law enforcement officers in relation to this event. If no inquiries have taken place, or if they have been inconclusive, please explain why.

In the present criminal case, based on the measure issued by the General Prosecutor's Office of the Slovak Republic, upon the ruling of the investigator of the Police Force under ref. No. _____ dated _____ 2014, the criminal prosecution had been commenced pursuant to Section 199 paragraph 1 of the Code of Criminal Procedure with the accused being charged in five counts. As regards the first act, prosecution for the criminal offence of abuse of powers by a public official pursuant to Section 326 paragraph 1 (a), paragraph 2 (a) and (c) of the Criminal Code had been commenced with reference to the provisions of Section 138 (h) and Section 140 (b) of the Criminal Code. With respect to the second act, prosecution for the criminal offence of abuse of powers by a public official pursuant to Section 326 paragraph 1 (a) of the Criminal Code had been commenced, for the third act, the prosecution had been commenced for the forcible entry into dwelling pursuant to Section 194 paragraph 1, paragraph 2 (b) of the Criminal Code. In case of the fourth act, the prosecution had been commenced for the criminal offence of bodily harm pursuant to Section 156 paragraph 1 and paragraph 2 (a) of the Criminal Code with reference to Section 139 paragraph 1 (a) of the Criminal Code, and in the fifth act, for the criminal offence of torture and other inhuman or cruel treatment pursuant to Section 420 paragraph 1, paragraph 2, (e) of the Criminal Code, which should have been committed by unknown perpetrators, members of the Police Force.

Furthermore, in the criminal case in question, the criminal prosecution had been launched for another, in the order, the sixth act, by issuing of a ruling by an investigator under ref. No. _____ dated _____ 2014 for the criminal offence of abuse of powers by a public official pursuant to Section 326 paragraph 1 (a) of the Criminal Code.

In the course of the criminal proceedings, the investigator of the Police Force carried out extraordinary evidence taking, he procured a wealth of evidence for a thorough and precise clarification of all the facts and circumstances, and the evidence obtained showed that the acts, for which the criminal prosecution had been commenced, either had not happened or they did not constitute a criminal offence, and there was no reason for referral of the case.

During the criminal proceedings, the provisions of the Code of Criminal Procedure, as well as the Constitution of the Slovak Republic and the international treaties obliging the Slovak law enforcement authorities to respect the rights of the injured parties were rigorously complied with. Throughout its duration, the criminal proceedings were under scrutiny not only of the Slovak public, but also of the bodies of international organizations working to protect the rights of minorities, dealing with contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Interrogations and other procedures performed in the course of criminal proceedings were attended by the prosecutor of the Regional Prosecutor's Office in Prešov who supervised over the observance of law in the pre-trial proceedings.

Based on the collected evidence and the conclusions of the investigation, the investigator issued a ruling on 23 November 2015 under ref. No. _____

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whereby, pursuant to Section 215 paragraph 1 (a) of the Code of Criminal Procedure with reference to the provision of Section 215 paragraph 4 of the Code of Criminal Procedure, he discontinued the criminal prosecution of acts under points 4) and 5) as there were reasonable grounds to believe that the acts, for which the criminal prosecution was conducted, had not been committed. At the same time, through the above mentioned ruling pursuant to Section 215 paragraph 1 (b) of the Code of Criminal Procedure with reference to the provision of Section 215 paragraph 4 of the Code of Criminal Procedure, he discontinued the criminal prosecution of the acts under points 1) and 6), because the acts did not constitute criminal offences, and there was no reason for referral of the cases. The injured parties, through their lawyers, filed two complaints against the said ruling, which were dismissed as unfounded by the prosecutor of the Regional Prosecutor's Office in Prešov upon the resolutions under ref. No.

of 2016 and under ref. No. of 2016 pursuant to Section 193 paragraph 1 (c) of the Code of Criminal Procedure.

Furthermore, on 2016, the investigator of the Police Force issued a ruling under ref. No. , whereby, pursuant to Section 215 paragraph 1 (a) of the Code of Criminal Procedure with reference to Section 215 paragraph 4 of the Code of Criminal Procedure, he discontinued the criminal prosecution in a part of the act under point 2 and the act under point 3) because there were reasonable grounds to believe that the acts, for which the criminal prosecution was conducted, had not been committed. At the same time, through the above mentioned ruling pursuant to Section 215 paragraph 1 (b) of the Code of Criminal Procedure with reference to Section 215 paragraph 4 of the Code of Criminal Procedure, he discontinued the criminal prosecution in a part of the act under point 2) because the act did not constitute a criminal offence and there was no reason for referral of the case. Several injured parties, through their proxies, lodged complaints against this ruling. The prosecutor of the Regional Prosecutor's Office in Prešov dismissed the complaints lodged by the injured parties as they were unfounded, by his resolutions under ref. No.

of 2016 and under ref. No. of 2016 pursuant to Section 193 paragraph 1 (c) of the Code of Criminal Procedure. Through these actions, the aforementioned ruling of the investigator of 2016 on discontinuation of the criminal prosecution became final and conclusive.

As regards further inquiries into the police intervention of 19 June 2013, the criminal case at issue was also reviewed by the Senate of the Constitutional Court of the Slovak Republic within a decision making on a constitutional complaint of the injured parties setting out the objections against the violation of their fundamental rights, guaranteed under Article 16 paragraph 2, Article 19 paragraph 1 and 2, Article 21 paragraphs 1, 2 and 3, and Article 46 paragraph 2 of the Constitution of the Slovak Republic, and the rights guaranteed under Article 3, Article 8, Article 13 and Article 14 of the European Convention for Human Rights and Fundamental Freedoms, which was allegedly caused by the practices of the Ministry of the Interior of the Slovak Republic, the Control and Inspection Service in the proceedings held under ref. No. , as well as by the practices of the Regional Prosecutor's Office in Prešov, in the proceedings held under ref. No.

Based on the information provided by the Ministry of Justice of the Slovak Republic, we state that the Constitutional Court of the Slovak Republic dismissed the complaint by resolution of 2017 (hereinafter referred to as "the Resolution").¹

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The Constitutional Court of the Slovak Republic stated that the submitted complaint appeared to meet fair grounds for dismissal for non-compliance with the essential elements prescribed by law. Despite the above deficiencies, the Constitutional Court of the Slovak Republic, in order to avoid excessive formalism and considering the seriousness of the claims and the nature of violation of the rights challenged by the complainants, proceeded to examine the complaint insofar as it was allowed due to relevant quality of the arguments used in the filed complaint and its supplements, or resulting from their annexes, i.e. in some parts of the texts without corresponding targeting to specific complainants.

Based on the extensive evidence taking carried out by the bodies involved in criminal proceedings, it was concluded that the offences, for which the criminal prosecution had been commenced, were either not committed at all or they did not constitute criminal offences, and there was no reason for their referral. The results of the investigation conducted by the officers of the Police Force show that the police intervention was legitimate, as the Constitutional Court of the Slovak Republic has also stated (See also response No. 1)

Ad item No 3 – Please provide information on the legal basis upon which the Regional Prosecutor's Office, on 23 November 2015, dismissed the complaints in relation to the six counts against the police officers involved in the raid of 19 June 2013 and approved the discontinuation of the criminal investigation by the Department of Control and Inspection Service of the Ministry of the Interior.

In the criminal case of police intervention in the settlement of Budulovská in Moldava nad Bodvou and in the settlement of _____ on 19 June 2013, the prosecutor of the Regional Prosecutor's Office in Prešov decided only on the complaints that had been filed against the aforementioned rulings rendered by the investigator of the Police Force on the discontinuation of criminal prosecution. He decided on the complaints by resolutions under ref. No. _____

of _____ 2016 and under ref. No. _____ of _____ 2016, whereby he dismissed the complaints as unfounded in compliance with Section 193 paragraph 1 (c) of the Code of Criminal Procedure. On further complaints, he decided by rulings under ref. No. _____ of _____ 2016 and under ref. No. _____ of _____

2016, whereby he dismissed the complaints as unfounded in compliance with Section 193 paragraph 1 (c) of the Code of Criminal Procedure.

The decisions rendered by the prosecutor of the Regional Prosecutor's Office in Prešov were issued in accordance with the law, and both the decisions and the case-related investigation file were reviewed by the General Prosecutor's Office of the Slovak Republic and by the Senate of the Constitutional Court of the Slovak Republic within its decision making on the constitutional complaint. The decisions of the prosecutor of the Regional Prosecutor's Office in Prešov were assessed as regular and legal.

Ad item No 4 – Please provide information on the legal basis upon which the Constitutional Court decided to dismiss the complaints filed by _____

The Constitutional Court of the Slovak Republic ruled on the given complaint and its supplementation based on Article 127 paragraph 1 of the Constitution of the Slovak Republic, according to which " *The Constitutional Court decides on complaints by natural persons or legal entities if they are pleading the infringement of their fundamental rights or freedoms, or the human rights and freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law, unless other court makes decision on the protection of such rights and fundamental freedoms*".

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Ad item No 5 – Please provide information about the criminal proceedings launched against by the Regional Prosecutor Office, as well as detailed information about the status of this investigation.

In relation to the criminal cases of the accused, the General Prosecutor's Office of the Slovak Republic states that during the criminal proceedings held in the aforementioned criminal case (police intervention in the settlement of Budulovská in Moldava nad Bodvou and in the settlement of on 19 June 2013), there was a reasonable suspicion that several witnesses who gave their testimonies in the criminal case concerned should have committed the criminal offence of false accusation pursuant to Section 345 paragraph 1 of the Criminal Code. Only after the entry into force of the above-mentioned rulings of the investigator of the Police Force to discontinue criminal prosecution pursuant to Section 215 paragraph 1 (a) of the Code of Criminal Procedure and pursuant to Section 215 paragraph 1 (b) of the Code of Criminal Procedure, in the criminal case pending at the Inspection Service of the Ministry of the Interior of the Slovak Republic under ref. No.

the suspicion that the said criminal offence had been committed was referred for further legal action to be taken.

The District Directorate of the Police Force in Košice recorded four separate criminal proceedings, where charges were brought against four accused persons for the criminal offence of false accusation pursuant to Section 345 paragraph 1 of the Criminal Code. Investigations of these four cases were completed. The case was submitted to the supervising prosecutor of the District Prosecutor's Office of Košice I, by filing the petition for bringing an indictment.

Ad item No 6 – Information about measures taken to ensure the effectiveness, independence and impartiality of investigation of cases of law enforcement misconduct.

The legal system of the Slovak Republic currently sufficiently ensures the effectiveness, independence and impartiality of the investigation of cases of abuse of powers by law enforcement authorities. The effectiveness of the independence of investigation in cases of abuse of powers by law enforcement authorities is ensured primarily by the fact that an investigator of the Police Force who conducts an inquiry into the criminal case is procedurally independent, even in relation to his supervisory police officer. Any unlawful interference of a superior officer with the investigation conducted by an investigator of the Police Force in criminal proceedings is punishable under criminal law.

Furthermore, the effectiveness, impartiality and independence of investigating the cases of abuse of powers by law enforcement authorities is also ensured by the fact that the prosecutor supervises over compliance with the law prior to the commencement of criminal prosecution and in pre-trial proceedings, he is authorized to give binding instructions to the investigator of the Police Force for actions to be taken, and he has other significant powers.

The procedures applied by the bodies involved in criminal proceedings and courts, and also by an investigator, are governed by the Code of Criminal Procedure in such a way that the offences are properly detected and their perpetrators are fairly punished by law, while the fundamental rights and freedoms of natural persons and legal entities are required to be protected. The investigator has the powers and measures regulated by the Code of Criminal Procedure, and he also uses them in the case of crimes committed by law enforcement authorities.

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Ad item No 7 – Please indicate the measures undertaken to ensure that provisions of laws in the Slovak Republic are not used to criminalize the right to access to justice and to seek effective remedy.

By virtue of the position of the Ministry of Justice of the Slovak Republic, the Slovak legal system contains numerous means designed to ensure the accuracy and lawfulness of criminal prosecution of persons. In order to avoid illegal prosecution and conviction, the person suspected of having committed a criminal offence, accused or indicted of it (depending on the stage of criminal proceedings), has the right to use both ordinary and extraordinary remedies, the purpose whereof is to examine and properly assess the legality of the decision and the procedures followed by subordinate authorities.

In connection with the criminal cases of the accused , the General Prosecutor's Office of the Slovak Republic also points out to the following facts.

In the original criminal case (police intervention in the settlement of Budulovská in Moldava nad Bodvou and in the settlement of on 19 June 2013), the performed investigation proved that in the context of the police intervention in the settlement of Budulovská in Moldava nad Bodvou and in the settlement of on 19 June 2013, no criminal offences had been committed by members of the Police Force, and therefore, **based on the evidence collected so far and on the fact that the criminal prosecution was legally discontinued in the criminal case in question, it is not possible to come to the conclusion that the persons in this criminal case are in the position of the injured parties. For this reason, there can be no talk of the victims of crime in this context.** This conclusion can be drawn from the fact that, after concluding the criminal proceedings, the investigator of the Police Force issued rulings to discontinue criminal prosecution, since it is beyond doubt that the act, for which the criminal prosecution was conducted, had not happened, or the act does not constitute a criminal offence, and there is no reason for referral.

The status of a person as the injured party in criminal proceedings arises from the fact that such a person has been caused, by an unlawful conduct (by committing a criminal offence), either harm to health or damage. In the event that in the criminal proceedings, it is lawfully decided that the act, for which the criminal prosecution was launched, had not been committed, or the act does not constitute a criminal offence, and there is no reason for referral, it is concluded that in this case there could have been no damage or harm to health caused, as foreseen in the Criminal Code. Based on the final and conclusive ruling pursuant to Section 215 paragraph 1 (a) of the Code of Criminal Procedure or pursuant to Section 215 paragraph 1 (b) of the Code of Criminal Procedure, the person who had had up to then the position of the injured party has lost such status, because no damage or harm to health has been caused to him/her.

In the criminal case of the police intervention in the settlement of Budulovská in Moldava nad Bodvou and in the settlement of on 19 June 2013, dealt with by the General Prosecutor's Office of the Slovak Republic under ref. , despite the fact that at the beginning of the original criminal proceedings many persons were granted the status of the injured parties, in the context of the criminal proceedings, it was found out and cleared up that the crimes against the aforementioned persons were not committed as a result of the police intervention. By securing the sufficient amount of evidence, it was objectively established that, as a result of the police intervention, the aforementioned persons were not caused any harm to health or damage that would justify these persons to be granted the status of the injured parties.

Due to above mentioned we reject the assertion that in the criminal cases of the accused the provisions of the Slovak legislation were used (misused) to criminalize the right to access to justice and to criminalize the motions to seek effective remedy. Such a claim is not supported by any relevant evidence, and the above conclusion was drawn

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not only by the supervisory prosecutor of the Regional Prosecutor's Office in Prešov and the supervisory prosecutor of the General Prosecutor's Office of the Slovak Republic, as the bodies supervising the observance of legality in criminal proceedings, but also by the Senate of the Constitutional Court of the Slovak Republic, as a body for the protection of constitutionality, in its above-mentioned Resolution under ref. No.