



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Slovak Republic

Review by Malta and Poland of the implementation by the
Slovak Republic of articles 15 – 42 of Chapter III.
“Criminalization and law enforcement” and articles 44 – 50 of
Chapter IV. “International cooperation” of the United Nations
Convention against Corruption for the review cycle 2010 -
2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (the “Convention” or “UNCAC”) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Slovak Republic of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the Slovak Republic, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Malta and Poland, as well as the Slovak Republic, by means of telephone conferences and e-mail exchanges in accordance with the terms of reference and involving Dr. Michaela Kontriková, Mr. Juraj Novocký and Mr. Ronald Kakaš as focal points from the Slovak Republic, Mr. Paul Vassallo from Malta, and Ms. Agnieszka Stawiarz and Mr. Paweł Rutkowski from Poland. The staff members from the Secretariat were Mr. Jonathan Agar and Ms. Annika Wythes.
6. A country visit, agreed to by the Slovak Republic, was conducted from 22 to 25 May 2012.

III. Executive summary

1. Introduction

1.1. Overview of the legal and institutional framework of the Slovak Republic in the context of implementation of the United Nations Convention against Corruption

7. *The Slovak Republic signed the United Nations Convention against Corruption Convention on 9 December 2003 and following agreement of the National Council in accordance with Article 7(4) of the Constitution, the President ratified the Convention on 25 April 2006. The Slovak Republic deposited its instrument of ratification with the Secretary-General on 16 June 2006 and the Convention entered into force domestically on 1 July 2006.*

8. *The Constitution, which entered into force on 1st October 1992, represents the supreme law of the Slovak Republic. Article 124 of the Constitution establishes the Constitutional Court as an independent judicial authority vested with the mandate to protect the Constitution. In doing so, the Court is responsible for deciding on the conformity of domestic laws with the Constitution, constitutional laws and international treaties which have been ratified by the Slovak Republic.*
9. *The Office of Public Prosecution, headed by the Attorney General, is established as an independent and uniform system and is mandated to pursue criminal proceedings on behalf of the State against any individual suspected of having committed a crime. Prosecutors are obliged to use all statutory means available to them with a view to ensuring the protection of the rights guaranteed by law to individuals, legal entities and the State.*
10. *Slovakia has in recent years developed an integrated system of investigative, prosecutorial and judicial bodies specialized in combating corruption and other serious economic crimes.*

The Anti-Corruption Bureau

11. *The Anti-Corruption Bureau, established in January 2004, has exclusive jurisdiction over the investigation of criminal offences under the substantive jurisdiction of the Special Criminal Court (see below) including corruption and serious economic crime offences, and is also responsible for international cooperation in relation to such investigations. The Bureau operates under the authority of the President of the Police force and under the supervision of prosecutorial authorities but is functionally independent from other parts of the police.*

The Special Prosecution Office

12. *The Special Prosecution Office, established in September 2004, has exclusive jurisdiction over the prosecution of corruption and serious economic crime offences. Acting under the authority of the Attorney General, the Special Prosecution is technically part of, but functionally independent from, the General Prosecution Office.*

The Specialized Penal Court

13. *The Specialised Penal Court, established in July 2009, has exclusive jurisdiction in relation to mainstream corruption offences and other serious economic crimes. The Specialized Court also has exclusive criminal jurisdiction in relation to cases involving members of parliament and other senior public officials.*

The Financial Intelligence Unit

14. *The Financial Intelligence Unit (FIU), established in 1996, is the primary body responsible for enforcing the requirements of Slovakia's anti-money laundering legislation. In doing so, the FIU receives, analyzes and processes unusual transaction reports (UTRs) received from financial institutions, transfers information to relevant law enforcement authorities where they consider a criminal offence may have been committed*

and facilitates international cooperation regarding information held by financial institutions. The FIU also contains the central Asset Recovery Office.

15. UNCAC offences are predominately criminalized in the Criminal Code, Act No. 300/2005 Coll. of 1 January 2006 (“Criminal Code”) and the Code of Criminal Procedure, Act No. 301/2005 Coll. of 1 January 2006 (“Code of Criminal Procedure”).
16. The *lex generalis* of the Criminal Code and the Criminal Procedure Code, is supplemented by a number of *lex specialis* instruments, including the Act of 4 March 2010 on the Proof of Origin of Property, No. 101/2010 Coll. (“Proof of Origin Act”) and Act No. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing (“the Anti-Money Laundering Act”).

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

17. Sections 332 and 333 of the Criminal Code criminalize active bribery both in the public and private sector. In practice, however, section 333 is used for prosecutions in relation to bribery in the public sector, while section 332 is used in relation to bribery in the private sector. This is due to the additional requirement under section 333 that the act of bribery take place in relation to the “procurement of a thing of general interest”, meaning that the act of bribery was in some way contrary to the public interest. This requirement is more likely to be satisfied in the context of the bribery of public officials than private individuals.
18. Articles 328 and 329 of the Criminal Code criminalize passive bribery when committed either directly or through an intermediary. As in the case of active bribery, while both provisions could technically be used to prosecute passive bribery in both the public and private sector, in practice prosecutors will use article 329 to prosecute public officials due to its requirement that the act of bribery relates to the “procurement of a thing of general interest”.
19. Active bribery of foreign public officials and officials of international organizations is criminalized under articles 334 and 335 the Criminal Code, with articles 330 and 331 criminalizing passive bribery by such officials. However, to date, no prosecutions have been brought under these provisions.
20. Increased penalties are applicable where the act of bribery has been committed by a public official. The definition of ‘public official’ is provided in a listed format under section 128 of the Criminal Code, but case-law indicates that the courts take a narrow approach when considering whether a public official is acting “in the exercise of his/her official duties”.
21. While the investigation and prosecution of corruption offences has increased in recent years, less progress had been made in relation to the prosecution of bribery in the private sector.

22. *Trading in influence is criminalized under section 336 of the Criminal Code, but at present does not extend to the trading of “supposed” influence.*

Money-laundering, concealment (articles 23, 24)

23. *Slovakia has met the requirements of the Convention in relation to money laundering. Section 233 of the Criminal Code criminalizes a broad range of actions in relation to the proceeds of crime including the transferring, holding, hiding, concealing, using, consuming, destroying or altering of such proceeds with the intention of concealing their criminal origin. The range of predicate offences covered by Section 233 is broad enough as it applies to actions taken in relation to the proceeds of crime derived from any criminal offence.*
24. *A conviction under section 233 will result in a minimum term of imprisonment of two to five years, with more severe penalties applicable where the crime is committed as a public official. Statistics provided by Slovakia demonstrated some success in enforcement, with 125 investigations initiated in 2011 leading to 16 successful prosecutions.*
25. *The lex generalis of the Criminal Code is supplemented by the lex specialis of the Anti-Money Laundering Act 297/2008 which defines the Financial Investigation Unit as the responsible body for the area of prevention and detection of money laundering and terrorist financing.*
26. *As regards the concealment of property resulting from the commission of corruption offences, Section 231 of the Criminal Code provides that any person who conceals, transfers to himself or another, leases or accepts as a deposit a thing obtained through a criminal offence committed by another person shall be liable to a term of imprisonment of up to three years. Slovakia could not however demonstrate any examples of the enforcement of this provision.*

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

27. *Section 213 of the Criminal Code criminalizes embezzlement in both the private and the public sector. However, in order for an individual to be prosecuted under this provision they must have embezzled above a specified minimum amount. Embezzlement is not considered a corruption-related offence in Slovakia and is consequently dealt with by the police and General Prosecution office rather than the specialized anti-corruption bodies outlined above.*
28. *Abuse of functions is criminalized under section 326 of the Criminal Code. Slovakia has demonstrated some success in enforcing this domestic provision with 72 officials having been subject to investigation in 2011 and 28 convictions obtained.*
29. *As regards illicit enrichment, while no applicable criminal offence is provided, the law on the Proof of Origin of Property provides grounds in civil law on which a prosecutor may submit a petition before the court for a declaration of illicit enrichment on the part of an individual. Where such a declaration is made, property to the value of the amount declared to have been illicitly gained will be confiscated by order of the court.*

30. *However, the reviewing experts noted a number of significant hurdles preventing prosecutors from using this legislation effectively. Under section 6(1) of the Act, in order to be able to apply for a declaration of illicit enrichment, a prosecutor must demonstrate that an individual owns property with a value of 1500 times the minimum wage (equivalent to 480,900 Euros), in addition to his regular income. The Financial Intelligence Unit confirmed that five cases in which a substantial amount of unexplained property had been proved to have been obtained by public officials had to be discontinued due to not meeting this requirement. The reviewing experts considered the imposition of such a threshold to be excessive.*
31. *Furthermore, under section 4(2) of the law, the value of an individual's property for the purposes of the Act is the value at which it was originally bought. The Financial Investigation Unit indicated that this often meant that individuals were able to hide embezzled funds through fraudulent real estate transactions.*

Obstruction of justice (article 25)

32. *Section 344 of the Criminal Code criminalizes the obstruction of justice, covering all of the requirements of Article 25 of the Convention. The national authorities were also able to demonstrate success in the application of this domestic provision, with 57 investigations carried out in 2011 leading to 31 successful convictions.*

Liability of legal persons (article 26)

33. *Under section 19 of the Criminal Code, only a natural person may be found guilty of a criminal offence. However, following recent amendments to the Criminal Code, it is now possible under Section 83a and 83b of the Code for a Court to impose protective measures on a legal person (e.g. through the imposition of a fine or the confiscation of property) where the offence has been committed by a natural person in the course of representing the company, taking decisions in the name of the company or otherwise exercising control over the company.*
34. *Legal persons are in some circumstances also subject to administrative liability, such as in relation to breach of taxation or company law requirements.*

Participation and attempt (article 27)

35. *Slovakia criminalizes aiding, instigating, organizing and assisting the commission of a criminal offence under section 21 of the Criminal Code. Section 20 provides that where a crime is committed by more than one person, each participating individual will have the same criminal liability. An attempt to commit an offence, whether successful or not, is also criminalized under section 14 of the Criminal Code.*
36. *The national authorities were unable to provide any evidence of the actual application of these domestic provisions as current statistics do not differentiate between convictions for committing an offence and those for assisting in, participating in or attempting to carry out such an offence.*

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

37. *As regards the penalties applicable to corruption-related offences, it was noted by the reviewing experts that significant penalties apply where individuals are found guilty of such offences. Penalties generally range from the imposition of a substantial fine to imprisonment for a period of up to 10 years, or longer where aggravating circumstances are applicable.*
38. *Immunity from prosecution is addressed in various provisions of the Constitution and under sections 8 and 9 of the Criminal Procedure Code. According to these provisions, for prosecution of Members of Parliament to proceed the prior consent of the National Council of Parliament is required. Similar protection is afforded to members of the Constitutional Court. To the knowledge of the representatives of the Slovakian prosecution authorities, there has been no case in which such permission has been denied where required for prosecution to proceed.*
39. *Where prosecution proceedings have started in relation to a public official, the Slovakian authorities indicated that the relevant person would, in normal circumstances, be temporarily suspended from their position. The decision as to whether an individual will be so suspended will be left to the specific public administration body in which that person works. Where a member of the judiciary is subject to criminal proceedings, it will be at the discretion of a Minister of government as to whether he will be suspended. Once a three-year period of suspension has passed, the relevant member of the judiciary has the right to return to his position.*
40. *It was noted by the reviewing experts that there was not presently any form of common code of conduct or code of ethics applicable to all public officials, meaning that the disciplinary actions taken against officials where they are subject to criminal proceedings is inconsistent between different government departments, leaving a significant amount of discretion to senior members of individual public authorities.*
41. *Slovakia confirmed to the reviewing experts that a number of programmes were in place to ensure the reintegration of people into society following a period of imprisonment.*
42. *Slovakia has a number of legislative provisions that facilitate the cooperation of offenders in the investigation of corruption offences. Prosecutors may stay or conditionally suspend proceedings against a person who provides information that may help solve a crime. Under section 39 of the Criminal Code, a Court may also reduce custodial sentences below the minimum prescribed by law for any suspect who has assisted in the investigation of an offence of corruption.*

Protection of witnesses and reporting persons (articles 32, 33)

43. *Slovakia's legal system provides for numerous forms of protection to witnesses who may be endangered due to their participation in criminal proceedings. Section 134 of the Criminal Code permits the use of audio-visual tools where the examination of the witness in court may cause them to be endangered. Section 136 also allows the withholding of the identity or place of residence of a witness where disclosure would endanger that individual and permits for the voice of the witness to be altered to this end. Authorization for the use of these protection techniques must be given by the judge in the relevant*

criminal proceedings. It was indicated by Slovakia that such protection is not often required in practice.

44. *Slovakia has entered into 10 bilateral agreements with other States parties, including the Czech Republic and Canada, regarding the relocation of witnesses in order to ensure their protection.*
45. *As regards the protection of reporting persons, legislative protection is only provided under Section 13 of the Labor Code, which is restricted in application to the private sector. There are therefore currently no statutory protections in place for public officials who report acts of corruption. In this regard, the reviewing experts noted that a draft Whistleblower Protection Bill was presently being developed and noted the willingness of civil society and other stakeholders to engage in the development of this legislation.*

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

46. *Section 60(1)(c) of the Criminal Code enables the Court to order the forfeiture of anything obtained by means of a criminal offence, or as remuneration for committing a criminal offence. Furthermore, section 60(1)(d) of the Criminal Code provides that anything obtained by an individual in exchange for the proceeds of crime may also be seized.*
47. *In cases where the proceeds have already been disposed of, merged with other property, or can no longer be reached, the Court may order the forfeiture of something else with a similar value. Specific provisions are in place for the confiscation of property obtained as a result of bribery offences under section 58 (2) of the Criminal Code.*
48. *There is currently no centralized body responsible for administering property and assets in pursuance of the above provisions. Seized property is administered by whichever public authority was responsible for seizure.*
49. *Slovakia has legislative provisions in place allowing law enforcement authorities to obtain information from financial institutions for the purposes of the investigation and prosecution of corruption offences that would otherwise be protected under banking secrecy laws.*

Statute of limitations; criminal record (articles 29, 41)

50. *Section 87(1) of the Criminal Code provides that the applicable limitation period is twenty years in the case of a felony for which the maximum custodial penalty is at least 10 years. The limitation period for all other felonies is 10 years and the limitation period for minor offences is five years or three years, depending on the applicable maximum sentencing period.*
51. *The applicable limitation period for the majority of corruption offences would be 5 or 10 years, depending on the maximum custodial sentence applicable to each offence. The limitation period begins from the date the offence was committed.*
52. *Section 87 (2) of the Criminal Code excludes a range of periods from being counted as part of the limitation period including the time during which an offender cannot be made*

to stand trial due to legal impediments and the time during which criminal prosecution was interrupted for other reasons.

53. *Slovakia confirmed that there is no prohibition in their domestic legislation on a court taking into consideration a criminal conviction of an individual in another State for the purpose of criminal proceedings. No specific examples, however, could be provided in this regard.*

Jurisdiction (article 42)

54. *Articles 3 - 7 of the Criminal Code allow Slovakia to assert jurisdiction in relation to corruption offences committed on Slovakian territory, by Slovakian nationals abroad and against a Slovakian national abroad. Where an individual plans an offence in a foreign jurisdiction with the intention of carrying it out in Slovakia but ultimately commits the offence in that same foreign jurisdiction, case-law has established that Slovakia can nevertheless assert jurisdiction over the case.*

55. *Where jurisdiction is asserted by Slovakia and another European State in relation to a corruption offence, cooperation with the foreign jurisdiction is carried out through the EUROJUST network.*

Consequences of acts of corruption; compensation for damage (articles 34, 35)

56. *Civil remedies are available in relation to acts of corruption under Slovakian legislation. In particular, section 442 of the Civil Code provides that any intangible damage that an individual suffers as a result of an act of corruption must be compensated.*

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

57. *At all stages of the law enforcement process, a specialized body exists to deal specifically with corruption-related offences. Following the establishment of the Anti-Corruption Bureau in 2004, there has been a significant increase in the number of corruption cases brought before the courts.*
58. *The investigation and prosecution bodies have made efforts to engage with public officials and thereby encourage reporting of acts of corruption through the provision of ad-hoc training on the anti-corruption legal framework in Slovakia. Public officials, and all Slovakian citizens, are also under an obligation under the Criminal Code to provide information to law enforcement authorities where they believe a corruption offence may have occurred.*
59. *As regards cooperation with the private sector, the Slovakian FIU provides training sessions to financial institutions and other private sector bodies regarding their reporting obligations under relevant banking laws.*

2.2. Successes and good practices

60. *Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:*

- *Slovakia has established specialised anti-corruption institutions at each stage of the law enforcement process and this has led to a significant increase in prosecutions for corruption offences in recent years.*
- *Through the Financial Intelligence Unit and other bodies, Slovakia has demonstrated a proactive approach to engaging with the private sector, particularly financial institutions.*
- *Slovakian legislation provides a range of possibilities for extending the statute of limitations in relation to corruption-related offences.*

2.3. Challenges in implementation, where applicable

61. *The following steps could further strengthen existing anti-corruption measures:*

- *Consider amending the definition of trading in influence so as to ensure that the trading of “supposed influence” is also criminalized;*
- *Consider reducing the threshold amount required for the prosecution to apply before the court for an asset declaration in cases of suspected illicit enrichment;*
- *Consider amending section 4(2) of Act 101/2010 in order that the actual rather than the purchase value of property obtained by an individual may be taken into account as part of their estate where the Financial Investigation Unit consider that property may have been obtained as a result of a transaction at an undervalue;*
- *Continue efforts to reform domestic legislation relating to the protection of whistleblowers and, in doing so, seek to consult with a broad range of stakeholders;*
- *Consider adopting a broader approach when determining whether a public official is acting in the exercise of his/her official duties;*
- *Reduce the threshold amount applicable to prosecutions for the embezzlement of public funds; and*
- *Consider establishing a specialised body responsible for the administration of frozen, seized or confiscated property.*

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

62. Section 478 of the Code of Criminal Procedure (CCP) stipulates that the provisions of the Code on judicial cooperation in criminal matters, including extradition and mutual legal assistance (MLA), shall be applied unless an international treaty states otherwise. The implementation of such a treaty into the national legal order is not strictly necessary, because it can also be self-executing. The dual criminality requirement is foreseen in the domestic legal order (s. 479, CCP). According to section 499, extradition shall be admissible if the offence for which extradition is sought constitutes a criminal offence under Slovakian law and “is punishable under the same law by a maximum prison sentence of at least one year”. When at least one of the offences indicated in the extradition request meets the requirements set out in section 499, extradition may be granted.
63. The UNCAC could be used as a legal basis for extradition requests, but that has not been the case to date. There has been a preference instead to use multilateral instruments such as the European Convention on Extradition and bilateral extradition treaties or agreements. The Slovak Republic is presently negotiating extradition treaties with Australia and Poland. Where such an agreement is absent, the Criminal Code allows for extradition on a case-by-case basis pursuant the principle of reciprocity, outlined in the CCP. To date, no specific examples of extradition for corruption-related offences could be provided.
64. Section 490 of the CCP outlines the applicable procedures where the Slovak Republic is the requesting State (active extradition), while section 510 is applicable where the Republic is the requested State (passive extradition). Pursuant to section 510 of the CCP, the *aut dedere aut judicare* principle is fulfilled.
65. The CCP provides for the transfer of a sentenced person from abroad, as well as the continuation of enforcement of his/ her sentence in the Slovak Republic (ss. 522 and 523). The Republic is also a State party of the Convention on the Transfer of Sentenced Persons and is seeking to enter into the Inter-American Convention on Serving Criminal Sentences Abroad. Other bilateral treaties also exist. It was noted that the transfer of sentenced persons was not possible on the basis of reciprocity; in order to carry out a transfer, it was necessary to have an explicit agreement in place. Due to a lack of statistics in this area, the number of such transfers is unknown.
66. The Slovak Republic is a party to the European Convention on the Transfer of Criminal Proceedings (1972) and relevant bilateral treaties. It was confirmed that such transfers have taken place and one example was cited. The relevant provisions of the CCP are those of sections 528 and 529.

Mutual legal assistance (article 46)

67. The Slovak Republic confirmed that the UNCAC could be used as a legal basis for MLA requests, but to date there has not been any reported case of such use. There has, instead, been a preference to using specific treaties as a basis (i.e. European Convention on MLA in Criminal Matters) and bilateral treaties are also currently being negotiated

with a number of countries, including Australia. Where there is no treaty in place, MLA can be provided on a case-by-case basis pursuant to the principle of reciprocity. The Ministry of Justice acts as the central authority for receipt and further transmission of MLA requests and the acceptable languages are Slovak and English. MLA requests can also be made orally and then followed with a written confirmation. There was a lack of statistics on the number and types of MLA requests both sent and received.

68. The Slovak Republic has broadly implemented article 46 of the UNCAC successfully. MLA can be provided in relation to an offence committed by a legal person. The Slovak Republic would also not decline to render MLA on the ground of bank secrecy or fiscal matters. A prosecutor can postpone an MLA request, if it were to interfere with an ongoing investigation, prosecution or judicial proceeding. The average time for an MLA request to be processed, where a court hearing is in place in the requesting State, is 30 days.
69. Act No. 650/2005 on the execution of orders freezing property or evidence in the EU has proven to be cumbersome for the provision of MLA and amendments are being considered, also in consultation with the Council of the European Union.
70. The Slovak Republic noted that the Europol network was often used in relation to MLA requests. Section 484 of the CCP also provides a legal basis for the use of INTERPOL in the transmission and receipt of MLA requests.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

71. Law enforcement cooperation is afforded by virtue of the Schengen Convention, as well as various multilateral or bilateral agreements (also with non-European Union countries, such as Armenia). Section 478 of the CCP allows for the Slovak Republic to use the UNCAC as a legal basis for mutual law enforcement cooperation. However, in practice, such cooperation is executed on a more informal basis, through focal points and partner offices, institutions or agencies through the flexible sharing and exchanging of information (i.e. European Partners Against Corruption (EPAC)/ European Anti-Corruption Network (EACN), EUROPOL, INTERPOL, EUROJUST). Law enforcement authorities also use international channels and databases (e.g. Schengen Information System (SIS)). The information exchanged on an informal basis varies (i.e. identity, whereabouts and activities of suspected persons), but for certain types of information (i.e. details from bank accounts), a more formal system would be required (i.e. a Court order). However, neither the Police nor prosecutors found there to be any obstacles in providing cooperation.
72. Joint investigations are carried out (i.e. with the Czech Republic), pursuant to section 10(9) of the CCP and article 13 of the European Union MLA Convention of 2000. Special investigative techniques (i.e. telephone interception and covert surveillance) were also employed to assist in the gathering of evidence. The Code of Criminal Procedure, covers, inter alia: controlled delivery (s. 111); sham transfers (s. 112); surveillance of persons and items (s. 113); and interception and recording of telecommunications (s. 115).

3.2. Successes and good practices

73. Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the UNCAC:

- The Anti-Corruption Bureau demonstrated a number of significant successes with regard to cooperation with law enforcement agencies in other States, leading to the prosecution of individuals for corruption offences.
- A flexible approach is also taken by the Slovak Republic with regard to the provision of law enforcement cooperation.

3.3. Challenges in implementation, where applicable

74. The following points could serve as a framework to strengthen and consolidate the actions taken by the Slovak Republic to combat corruption:

- Consider establishing a means of collecting statistical data on extradition, MLA and transfer of sentenced persons, as well as monitoring the coordination and information-exchange between different national authorities (i.e. case management system); and
- Consider informing the UN Secretary-General that the Slovak Republic would consider using the Convention as a legal basis for cooperation on extradition and mutual legal assistance with other States parties.
- Consider amending Act No. 650/2005 on the execution of orders freezing property or evidence in the European Union with a view to rendering it more flexible.

IV. Implementation of the Convention

A. Ratification of the Convention

75. The Slovak Republic signed the Convention on 9 December 2003 (C.N.1427.2003.TREATIES-39) and ratified it on 1 June 2006 (C.N.468.2006.TREATIES-17). The Slovak Republic deposited its instrument of ratification with the Secretary-General on 16 June 2006 and the Convention entered into force on 1 July 2006.

76. The Ministry of Foreign Affairs of the Slovak Republic announced by the Announcement N. 434/2006, published in the Collection of the Acts of the Slovak Republic, that the Convention was adopted on 31. October 2003 in New York and that it was signed by Slovak Republic on 9. December 2003. The National Council of the Slovak Republic approved the United Nations Convention against Corruption by its Decree N. 2145 from 15. March 2006 and the President of the Slovak Republic ratified it on 25. April 2006. The instruments of ratification were deposited on 1. June 2006 by the Secretary-General of the United Nations, the designated depositary of the Convention. The convention entered into force on 14. December 2005 in accordance with the Art. 68, paragraph 1 and it entered into force for the Slovak Republic on 1. July 2006 in accordance with Art. 68, paragraph 2 of the Convention. .

B. Legal system of the Slovak Republic

77. The Constitution of the Slovak Republic, which entered into force on 1st October 1992, represents the supreme law of the Slovak Republic. The Constitution outlines the fundamental rights and freedoms of Slovakian nationals, the role and powers of the legislative, executive and judicial authorities and establishes the Office of the Public Prosecutor.
78. Under article 7, paragraph 4 of the Constitution of the Slovak Republic international treaties require the approval of the National Council of the Slovak Republic before ratification. As noted above, the National Council approved the UN Convention against Corruption on 15 March 2006 with the President ratifying it 25 April 2006.
79. International treaties that do not require implementing legislation and international treaties which directly confer rights or impose duties on natural or legal persons and which have been ratified in accordance with the relevant procedure shall have precedence over domestic law (Article 7, paragraph 5).
80. Article 124 of the Constitution establishes the Constitutional Court of the Slovak Republic as an independent judicial authority vested with the mandate to protect the Constitution. The Court is responsible for deciding on the conformity of domestic laws with the Constitution, constitutional laws international treaties which have been ratified by the Slovak Republic. Where the compatibility of a domestic law with the Constitution or a ratified international treaty is being challenged in proceedings before the Constitutional Court, its effect may be suspended by the Court prior to a resolution of the case if fundamental rights and freedoms may be threatened by their continued application, if there is a risk of serious economic damage or other serious irreparable consequence.
81. Where the Constitutional Court finds that there is inconformity between domestic legislation and the Constitution or a ratified international treaty, the body responsible for issuing the relevant legislation will be obliged to harmonize it with the relevant part of the Constitution or ratified international treaty. Where such harmonization is not successfully carried out within six months, the relevant domestic legislation will cease to have effect.
82. Prior to formal assent to an international treaty being given by the National Council of the Slovak Republic, the Constitutional Court will decide on the conformity of the relevant negotiated international treaty with the Constitution of the Slovak Republic. Such a decision may be requested by the President of the Republic prior to his submission of the negotiated treaty to the National Council for approval.
83. The Constitutional Court is also responsible for deciding disputes over competency between the central state administration bodies, except where domestic legislation provides another mechanism for resolving such disputes.
84. As regards the court system in Slovakia aside from the Constitutional Court, Article 141 of the Constitution provides that the judiciary in the Slovak Republic shall be administered by independent and impartial courts and that the judiciary shall be independent of other state authorities at all levels.

85. The judiciary is composed of the Supreme Court of the Slovak Republic and other subsidiary courts. As regards the jurisdiction of the courts, Article 142 provides that the courts shall “rule on civil and criminal matters and also review the legitimacy and legality of decisions made by public administration bodies”.
86. UNCAC-related offences are predominately criminalized in the Criminal Code, Act No. 300/2005 Coll. of 1 January 2006 (“Criminal Code”) and the Code of Criminal Procedure, Act No. 301/2005 Coll. of 1 January 2006 (“Code of Criminal Procedure”). The majority of mainstream corruption offences, as detailed in the UNCAC, are covered in sections 322 – 336a of the Criminal Code.
87. The *lex generalis* of the Criminal Code coupled with the Criminal Procedure Code, is supplemented by a number of *lex specialis* Acts related to corruption including the Act of 4 March 2010 on the Proof of Origin of Property, No. 101/2010 Coll. (“Proof of Origin Act”) and Act No. 297/2008 Coll. on Prevention of Legalisation of Proceeds of Criminal Activity and Terrorist Financing.
88. Slovakia has in recent years developed an integrated system of investigative, prosecutorial and judicial bodies specialized in combating corruption and other serious economic crimes.

The Anti-Corruption Bureau

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The Special Prosecution Office

90. The Special Prosecution Office, established in September 2004, has exclusive jurisdiction over the prosecution of corruption and serious economic crime offences. Acting under the authority of the Attorney General, the Special Prosecution is technically part of, but functionally independent from, the General Prosecution Office.

The Specialised Penal Court

91. The Specialized Penal Court, established in July 2009 after an earlier form of the Court was ruled unconstitutional by the Constitutional Court, has exclusive jurisdiction in relation to mainstream corruption offences and other serious economic crimes. The Specialized Court also has exclusive criminal jurisdiction in relation to cases involving members of parliament and other senior public officials.

The Financial Intelligence Unit

92. The Financial Intelligence Unit (FIU), established in 1996, is the primary body responsible for enforcing the requirements of Slovakia’s anti-money laundering legislation. In doing so, the FIU receives, analyzes and processes unusual transaction reports (UTRs) received from financial institutions, transfers information to relevant law

enforcement authorities where they consider a criminal offence may have been committed and facilitates international cooperation regarding information held by financial institutions. The FIU also contains the Slovak Republic's central Asset Recovery Office.

93. Under the system outlined above, mainstream corruption offences detailed in sections 328-336a of the Criminal Code are investigated by the Anti-Corruption Bureau, then if there is sufficient evidence, will be passed to the Special Prosecutor's Office and if there is a *prima facie* case, the matter will be presented before the Specialized Criminal Court. Other offences, such as embezzlement fall under the mandate of the General Prosecutor's Office, not the Specialized Prosecutor's Office. Therefore, for such an offence, it would be investigated by the Police, then if there is sufficient evidence it would be passed to the General Prosecutor's Office and if there is a *prima facie* case, it would be presented before a general Court.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

94. The Slovak Republic indicated that it has implemented the provision under review, pursuant to sections 333 and 336a of the Criminal Code.

Criminal Code

Section 333

(1) Any person who, in connection with the procurement of a thing of general interest, gives, offers, or promises a bribe to another person, either directly or through an intermediary, or gives, offers or promises a bribe for the same reason to a third party, shall be punished by imprisonment for a term of six months to three years.

(2) The offender shall be punished by imprisonment for a term of two to five years if he commits the act referred to in paragraph 1

a) as a result of more serious misconduct, or

b) against a public official.

(3) The offender shall be punished by imprisonment for a term of five to twelve years if he commits the criminal offence referred to in paragraph 1 at a large scale.

Section 336 a. Election corruption

(1) Any person who either directly or through an intermediary, gives, offers or promises a bribe to the person who has the right to vote, to participate in the referendum or plebiscite on the recall of the President of the Slovak Republic to

a) elect or vote a certain way,

b) not to elect or to vote a certain way,

- c) not to elect or not to vote at all or
- d) not to participate in elections, referendum or plebiscite on the recall of the President of the Slovak Republic, and therefore directly or through an intermediary, gives, offers or promises a bribe to another person shall be punished by imprisonment of up to two years.

(2) Who in association with the right to vote, to participate in the referendum or plebiscite on the recall of the President of the Slovak Republic, directly or through an intermediary, for himself or another person receives, requests or accepts the promise for a bribe to

- a) elect or vote a certain way,
- b) not to elect or to vote a certain way,
- c) not to elect or not to vote at all or
- d) not to participate in elections, referendum or plebiscite on the recall of the President of the Slovak Republic shall be punished by imprisonment of up to one year.

(3) The offender shall be punished by imprisonment for one year to five years if he commits the offense referred to in paragraph 1

- a) by serious misconduct;
- b) as a public official
- c) in relation to a protected person, or
- d) in the public.

95. The Slovak Republic cited a number of cases in which the above provisions have been applied.

96. In Case No. 1T/29/2009, the District Court in Galanta found guilty an offender who was caught in flagranti delicto by officers of Railway Police. The offender offered a bribe to them for “breaching their duties and refraining from acts resulting from their employment, profession or function” and asked to not to be imposed any sanction. The Court decided that the offender committed acts intended to accomplish of the offence of bribery with the intention to directly give a bribe to other persons to abstain from the acts and such to breach their duties resulting from their profession, however, the offence was not accomplished. The judgment became final on 19 March 2008.

97. In Case No. 6T/31/2006, the District Court in Poprad found guilty an offender for an attempt of the offence of bribery. The offender was found in flagranti delicto by employees of a private security service who guarded a supermarket. The offender tried to give them a bribe for not recording his theft and to release him and not to inform the competent police department. The court decided that the offender with the intention to commit the offence committed the act of endangering the society which directly tended to give a bribe to another person for breach of duties resulting him from his employment. The offence was not accomplished. The judgment became final on 16 January 2008.

98. In Case No. 1T 45/02, the District Court in Nitra considered an employee of Tax Office to be a public official.

99. In Case No. 1Tš/5/2005, the Special Court found guilty an offender (ex vice chief of staff of the army) who promised a bribe to a public official (chief of staff of the personal management of the General Staff of the Army) in order to introduce certain type of personal-managerial system. The court decided that the offender in relation to the procurement of a thing in general interest directly promised a bribe and such an act committed towards a public official. The judgment became final on 15 March 2007.

100. In Case No. PK-1Tš 10/2005, the Special Court found guilty an offender who accepted a bribe as a chief of a branch of National Shipping Office and shipping master in

exercising a state professional surveillance. The briber was considered as a public official. The judgment became final on 17 January 2008.

101. In Case No. PK - 1Tš/13/2005, the Special Court found guilty an offender (driver of a vehicle) who offered a bribe (a visit in an erotic saloon) for not being recorded for illegal transport of cigarettes. The bribe was offered to customs officials who were considered public officials. The offender also offered a bribe (a sum of money) to two firemen for persuading the two customs officials to allow him (the offender) to remove the cigarettes to another vehicle in order to avoid punishment for illegal transport of cigarettes.
102. The offender was sentenced for promising of a bribe in relation to procurement of a thing of general interest towards a public official and for trading in influence (directly promised a bribe to another person for influencing the exercising of the power of public official).
103. In Case No. PK - 1Tš 3/2006, the Special Court found guilty an offender (a driver of a motor vehicle) for giving a bribe to policemen who were considered public officials.
104. In Case No. PK 1Tš/16/2006, the Special Court found guilty two offenders (inspectors of the Slovak Trade Inspection) who accepted a bribe for not imposing a fine and for misrepresenting results of the control. The offenders were considered public officials.
105. In Case No. PK-1T/3/2007, the Special Court found guilty an offender who was arrested by Railway police due to being caught in flagranti delicto. The offender offered a bribe to the railway policemen for releasing him. The court decided that the offender in relation to the procurement of a thing of general interest directly offered a bribe and such act committed towards a public official. The judgment became final on 14 March 2007.
106. In Case No. PK 2T/9/2009, the Special Court found guilty an offender who offered a bribe to army policemen for not recording his misdemeanor. The members of the Army Police were considered public officials. The court decided that the offender directly offered a bribe to public officials in relation to the procurement of a thing of general interest.
107. In Case No. PK 1T/10/2007, the Special Court found guilty an offender who offered a bribe to a judge of a district court. The judge was asked to decide in the divorce proceedings in favor of the briber. The court decided that the offender directly offered a bribe in relation to the procurement of a thing of general interest and such act committed towards a public official. The judgment became final on 31 March 2008.
108. In Case No. PK 1T/13/2007, the Special Court found guilty an offender who offered a bribe to employees of an Alien Police Department for refraining from a control and letting him travel abroad. The court decided that the offender offered a bribe to public officials in relation to the procurement of a thing of general interest. The judgment became final on 4 July 2007.
109. In several cases (Cases No. PK 1T/44/2009, PK - 1T/10/2009, PK 2T/35/2008, 2T 36/2008, PK 2T/37/2008, PK 2T/38/2008, PK-1T/35/2008, PK 1 T/36/2008 and PK 1T/34/2008), offenders were found guilty for giving a bribe to an employee of a district administration office responsible for road traffic. The bribe was given in order to approve

an application for a registration of a car brought from abroad. The Special Court decided that the offenders directly offered a bribe towards a public official in relation to the procurement of a thing of general interest.

110. In the Case No. PK - 1T/3/2010, the Special Court found guilty a bankruptcy trustee who asked for a bribe for breaching his duties in the relevant bankruptcy proceedings. The offender was not considered a public official.
111. In the Case No. PK 2Tš/1/2005, the Special Court found guilty a mayor who asked a bribe from an owner of a commercial company for influence on members of the local parliament to decide not to recall a rental contract between the village and the company. The court decided that the mayor asked and accepted a bribe in relation to the procurement of a thing of general interest. The mayor was not considered a public official.
112. In several cases (Cases No. PK 2Tš 3/2005, PK - 1T/2/2010, PK 1T/43/2009, PK - 1T/42/2009, PK - 1T/40/2009, PK - 1T/39/2009, PK 1T/37/2009, PK - 1T/36/2009, PK - 1T/32/2009, PK 1T/29/2009, PK - 1T/26/2009, PK - 1T/37/2008 and PK - 1T/10/2008, PK 2T/11/2008, PK 2T/18/2008) a medical men, physicians or surgeons were not considered public officials. Employees of a Social Insurance Company (a state company responsible for paying retirement pensions, unemployment pensions or other social allowances) were not considered public officials.
113. In Cases No. PK 2T/13/2007 and PK 2Tš/36/2006, the Special Court found guilty two offenders who offered a bribe to a psychologist in order to get a positive psychologist opinion. Such opinion was necessary for successful recruitment and getting an employment. The court decided that the offenders directly offered a bribe in relation to the procurement of a thing of general interest. It means that psychologists were not considered public officials.
114. In the Case No. PK - 2T/22/2009, the Special Court found guilty an offender who offered a bribe to a chief of a district administration office in order to decrease the price of hire costs and for getting the right of first refusal to certain plots of land. The chief of the district administration office was not considered a public official. Slovakia indicated that statistical data in relation to the number of investigations, prosecutions and convictions are collected by the General Prosecutor Office of the Slovak Republic. Every prosecutor is obliged to fulfill special statistical bill in every criminal case. These data are collected electronically and annually published in the Annual Statistical Report of the General Prosecutor Office (GPO) of the Slovak Republic. The Annual Statistical Report is a part of the Annual Report of the GPO which is yearly approved by the National Council of the Slovak Republic (parliament). For public the data are available on the web page of GPO of the Slovak Republic too.
115. Analyses of collected data are provided by different state bodies including the Office of the Government and are used as the base for government and parliament to increase the public awareness in the fight against corruption, to introduce new anticorruption laws, standards and measures, to provide relevant changes in the state bodies if it is needed, to increase the financial and human resources of the relevant anti-corruption bodies and by these measures to make the fight against corruption more effective.

(b) Observations on the implementation of the article

116. During the country visit, it was confirmed by the national authorities that a “public official” is defined in a list format provided for in section 128(1) of the Criminal Code.

Criminal Code

Section 128

- (1) For the purposes of this Act, public officials shall mean the President of the Slovak Republic, members of the National Council of the Slovak Republic, members of the European Parliament, members of the Government, judges of the Constitutional Court of the Slovak Republic, judges, prosecutors or other persons holding an office in a body of public authority, members of the armed forces, persons in a service relationship, mayors, heads of self-governing regional authorities, members of local or regional self-governing authorities, civil servants and employees of State administration authorities, of local or regional self-governing authorities or of other State authorities, persons exercising the competencies of legal entities that have a statutory authority to make decisions in the area of public administration, notaries, court executors, members of forest guard, water guard, fishery guard, hunting guard, nature guard or persons authorised to act as nature guard, when they participate in the fulfilment of the duties of the society and of the State exercising the competencies they have been granted with a view to the responsible fulfilment of such duties. Criminal liability and protection of public officials under relevant provisions of this Act require that the offence be committed in connection with the exercise of their powers and responsibilities. Public officials shall also include the judges and officials of international judicial bodies recognised by the Slovak Republic and the functionaries and other officials of criminal justice authorities of other States, of the bodies of the European Union or the bodies established jointly by Member States of the European Union, who carry out criminal procedure duties for such other States or bodies; to be entitled to the protection under the provisions of this Act, they must carry out criminal procedure duties in conformity with the applicable international treaties or with the consent of Slovak authorities.
117. While the offence of committing a bribe under section 333 of the Criminal Code is not dependent on the finding that an individual receiving the bribe was acting as a public official, it was noted that a heavier punishment may be applied where an individual is found to be attempting to or actually bribing an individual acting in this capacity (see section 333(2)(b)).
118. The reviewing experts and officials from the Slovak Republic discussed, as an example of the implementation of this provision, Case No. PK 2Tš/1/2005, in which a local mayor was not deemed to a public official, despite the fact that a “mayor” is included in section 128(1) of the Criminal Code. The authorities clarified that for a person to be deemed a “public official” under section 333 of the Criminal Code (i.e. the offence of active bribery), he or she would need to be included in the list of officials under section 128(1), as well as be acting within his or her official responsibilities when the offence allegedly took place.
119. In this case, the mayor was not considered to be acting within his official responsibilities as he did not ultimately have responsibility for the administrative decision in relation to which the bribe was given (the granting of planning permission) even though he did in fact receive the bribe while carrying out his official duties as mayor. Consequently, the individual providing the bribe to the mayor in the offence could not receive the harsher sentence provided for under section 333(2)(b) of the Criminal Code.
120. The experts considered this case as an example of a narrow interpretation of when a public official was acting within their official responsibilities, which failed to reflect the reality of the situation.

121. The reviewing experts also noted, following discussions with officials from the Slovak Republic, that section 130 of the Criminal Code provides for the definition of a “thing of general interest”, as referred to in section 333 of the Criminal Code (active bribery).

Criminal Code

Section 131

(1) For the purposes of this Act, a thing of general interest shall mean an interest that transcends the framework of individual rights and interests of individuals, and is important for the society.

...

(3) For the purposes of this Act, a bribe shall mean a thing or other transaction of property or non-property nature to which there is no legal entitlement.

122. The reviewing experts noted that, with respect to section 332 of the Criminal Code, in 2010, there was 1 police investigation, 1 prosecution and 1 conviction and in 2011, there were 3 investigations, 2 prosecutions and 2 convictions.

123. Regarding section 333, in 2010, there were 166 police investigations, 133 prosecutions and 27 convictions, and in 2011, 123 police investigations, 108 prosecutions and 95 convictions.

124. Based on the information provided and confirmation received during the country visit, the experts deemed that the Slovak Republic had implemented the provision under review.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

125. The Slovak Republic indicated that they were in compliance with this provision of the Convention, citing section 329 of the Criminal Code.

Criminal Code

Section 329

(1) Any person who, in connection with the procurement of a thing of general interest receives requests or accepts the promise of a bribe for himself or for another person, either directly or through an intermediary, shall be punished by imprisonment for a term of three to eight years.

(2) The offender shall be punished by imprisonment for a term of five to twelve years if he commits the offence referred in paragraph 1 as a public official.

(3) The offender shall be punished by imprisonment for a term of ten to fifteen years if he commits the offence referred in paragraph 1 or 2 at a large scale.

126. The Slovak Republic provided a significant amount of case-law as evidence of their implementation of this provision of the Convention.

127. In Case No. 4T 34/2007, the District Court in Zvolen found guilty an offender who tried to give a bribe to a witness of a car accident. The offender asked the witness not to identify the offender's son as the driver of the car. The court decided that the offender directly offered the bribe to another person in order for him to breach his duties resulting from his status. The judgment became final on 1 August 2007.
128. In Case No. 4T118/05, the District Court in Bratislava II. found guilty an employee of the Ministry of Economy who accepted a bribe in return for the provision of a financial grant for a company for realization of the project. The court decided that the offender committed the offence of bribery, because he asked for a bribe in return for abuse of his status or function to provide an advantage to another person or for undue preferring of that person as regards others, and thereby the offender breached a particular duty resulting from his employment, status and function, and the duty to which he was obliged. The judgment became final on 9 February 2007.
129. In Case No. 6T/31/2006, the District Court in Poprad found guilty an offender for an attempt of the offence of bribery. The offender was found in flagranti delicto by employees of a private security service who guarded a supermarket. The offender tried to give them a bribe for not recording his theft and to release him and not to inform the competent police department. The court decided that the offender, with the intention to commit the offence, committed the act of endangering the society which directly tended to give a bribe to another person for breach his duties resulting to him from his employment. The bribe was not in fact given due to the refusal of the employees to receive the bribe. The judgment became final on 16 January 2008.
130. In Case No. 6T/34/2004, the District Court in Poprad found guilty an offender who gave a bribe to the President of a business association to change the decision of the association concerning the choice of a business partner in favour of the company of the offender's son. The court decided that the offender gave the bribe to another person for abuse of his status to undue preference of a person before others. The judgment became final on 19 February 2009.
131. In the Case No. 4T 106/07, the District Court Humenné found guilty an offender who was stopped by an employee of the Internal Control Department of a company. This employee was offered a bribe in order to take no further action after he discovered goods in the offender's truck for which the offender had no certificate. The court found that the offender had promised a bribe to the internal controller for refraining to act in such a way that would breach his duties resulting from his employment status. The judgment became final on 21 January 2008.
132. In the Case No. NM-1T/22/2004, the District Court in Trenčín found guilty an offender who promised a bribe to employees of the Customs Directorate for "forgetting the matter". The court decided that the offender promised the bribe for refraining to act in such a way that the employees would breach their duties resulting from their employment. The judgment became final on 12 November 2007.
133. In the Case No. 4T 7/07, the District Court found guilty an offender who offered a bribe to an employee of a private security service for allowing him not to unload the soya he was meant to unload. The court decided that the offender directly offered a bribe to the

employee for breach his duties resulting from the employment. The judgment became final on 29 March 2007.

134. In the Case No. 22T/71/2007, the District Court in Lučenec found guilty an advisor of a company providing loans because the offender asked for bribes to ensure preferential conclusion of a contract upon the provision of credit. The court decided that the offender directly for himself accepted a bribe for breach his duties resulting from his employment. The judgment became final on 7 January 2009.
135. In the Case No. PK - 1T/3/2010, the Special Court found guilty a bankruptcy trustee who asked for a bribe for breach his duties in the relevant bankruptcy proceedings. The agent of a commercial company who was asked to pay the bribe, refused to pay. However, he later cooperated with the police in order to catch the offender in flagranti delicto. The court decided that the offender accepted a bribe in relation to the procurement of a thing of general interest.

Case law concerning “public officials”:

136. In the Case No. PK-1Tš 10/2005, the Special Court found guilty an offender who accepted a bribe as a chief of a branch of National Shipping Office and shipping master in exercising a state professional surveillance. He was considered to be a public official. The judgment became final on 17 January 2008.
137. In the Case No. PK 1Tš/16/2006, the Special Court found guilty two offenders (inspectors of the Slovak Trade Inspection) who accepted a bribe for not imposing a fine and for misrepresenting results of the control. The offenders were considered public officials.
138. In the Case No. PK - 2T/50/2009, the Special Court found guilty an offender (an employee of the Bratislava Transport Company) who was in charge of control. During a control in a bus the offender accepted a bribe from a traveler who had not valid travel ticket. The court decided that the offender directly for himself asked and accepted a bribe in relation to the procurement of a thing of general interest. The offender was not considered to be acting as a public official at the time the offence occurred.
139. In the Case No. BB - 3Tš 8/2005, the Special Court found guilty an offender (the head of the Regional Land Administration Office) for asking and accepting a bribe for providing a positive opinion to the draft plan on non-agricultural use of an agricultural land. The positive opinion was necessary to the other decision on the change of typology of the relevant land with regard to the planned construction of an industrial park. The court found that the offender, in relation to the procurement of a thing of general interest directly and through an intermediary, asked for and accepted a bribe and that he committed this act as a public official.
140. In the Case No. BB 3T/1/2008, the Special Court found guilty an offender (a customs officer) who had asked for a bribe for not fulfilling his duties during a customs control and leaving the transported goods without the relevant duty being paid. The court considered the offender a public official who in relation to the procurement of a thing of general interest accepted a bribe directly for himself.

141. In the Case No. BB 3Tš/9/2005, the Special Court found guilty an offender who was an employee of a Labour, Social Affairs and Family Office, the head of the Active Politics on the Labour Market Department. The court considered him to be a public official. The offender intervened in procurement proceedings in order to choose a particular project and asked for a “kickback” after the project won the final competition.
142. On appeal, the Supreme Court as the appellate court changed this decision of the Special Court in such a way that the offender was not considered to be act as a public official. Although the offender was the head of the Active Politics on the Labour Market Department in the meantime, he had not a separate decision-making power. The Supreme Court did not consider it to be proved that the offender, at the relevant time, used the power given to him in the framework of his responsibilities to influence the relevant decision-making process. The relevant contract with the winner of the procurement process had to be signed only by the Director of the Labour, Social Affairs and Family Office, who is statutory of the office. The offender was not the holder of this statutory office but was a member of the selection commission for the bid. It was his duty to examine the offers and to produce an order of preference of the registered subjects with regard to their offers and the requirements stated by the office.
143. The Supreme Court decided that the offender in relation to the procurement of a thing of general interest directly and through an intermediary asked a bribe directly for himself and also for another person. The judgment was finalized on 5 June 2008.
144. As above, the Slovak Republic outlined the way in which data is collected in relation to investigations and prosecutions under this provision.

(b) Observations on the implementation of the article

145. The reviewing experts noted that, in Case No. PK - 2T/50/2009 and Case No. BB 3Tš/9/2005 the Courts appear to have again taken a particularly narrow approach to the definition of public official in section 128 of the Criminal Code. Consequently, the courts were not able to apply the more significant sanctions available under section 329(2) of the Criminal Code.
146. **Recommendation:** The reviewing experts consequently recommend that the Slovak Republic consider the amendment of section 128 of the Criminal Code in order to broaden the definition of public official so as to ensure that those offering, giving, receiving or soliciting a bribe in relation to the exercise of public functions will receive a heavier sentence than where the bribe does not relate to the exercise of such functions. Such an amendment would bring the law of the Slovak Republic closer into line with the requirements of section 15 (a) and (b) of the UNCAC.
147. The experts deemed the Slovak Republic to have implemented the provision under review.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

148. The Slovak Republic indicated that they had implemented this provision of the Convention, deeming sections 334 and 335 of the Criminal Code to be applicable.

Criminal Code

Section 334

(1) Any person who gives, offers or promises a bribe to a foreign public official or to another person, either directly or through an intermediary, in connection with the official duties of the foreign public official with the aim to obtain or maintain an undue advantage in an international business transaction, shall be punished by imprisonment for a term of two to five years.

(2) The offender shall be punished by imprisonment for a term of five to twelve years if he commits the criminal offence referred to in paragraph 1 at a large scale.

Section 335

(1) Any person who, either directly or through an intermediary, gives, offers or promises a bribe to a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognized by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organization or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship, or to a person in a similar position, or gives, offers or promises a bribe to a third party for the same reason, shall be punished by imprisonment of two to five years.

(2) The offender shall be punished by imprisonment for a term of five to twelve years if he commits the criminal offence referred to in paragraph 1 at a large scale.

149. The Slovak Republic noted that since 2009 there has been an investigation concerning a cash bribe of at least USD 100.000 given to the Government officials or to the Government party of a foreign government. This was the only example of implementation of this provision cited by the Slovak Republic.

(b) Observations on the implementation of the article

150. During the country visit, the national authorities referred to the listed approach to the definition of “foreign public officials” in section 128(2) of the Criminal Code. It was confirmed that the same test used (under UNCAC article 15) regarding “public officials”, namely that the foreign public official would need to be in the list and act within his or her official responsibilities.

Criminal Code

Section 128

(2) For the purposes of this Act, foreign public officials shall mean any person holding an office in the legislature, a judicial authority or a public administration authority of a foreign country including the head of State, or in a legal entity in which a foreign country exercises a decisive influence or in the international organisation established by States or another subjects of public international law, if the performance of their office also includes the competencies for running public affairs, and the criminal offence has been committed in connection with such competencies.

151. The reviewing experts noted the recommendation made under Article 15(b) of the Convention as regards an amendment of the Section 128(1) of the Criminal Code would be equally applicable to the above-cited section of the Code.

152. The reviewing experts also noted that the statistical data provided by the Slovak Republic in relation to the implementation of section 334 and 335 of the Criminal Code indicated that no investigations, prosecutions or judgements had been carried out under these provisions during 2010 or 2011. The experts noted that further efforts could be made by the Slovak Republic to enforce the provisions cited as evidence of the implementation of this provision of the Convention.

153. The reviewing experts deemed the provision under review to have been implemented by the Slovak Republic.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

154. The Slovak Republic indicated that they had implemented this provision of the Convention, referring to sections 330 and 331 of the Criminal Code.

Criminal Code Section 330

(1) Any person, who as a foreign public official receives, requests or accepts the promise of a bribe in connection with his official duties, either directly or through an intermediary, in order to provide or maintain an undue advantage in an international business transaction, shall be punished by imprisonment for a term of five to twelve years.

(2) The offender shall be punished by imprisonment for a term of ten to fifteen years if he commits the offence referred in paragraph 1 at a large scale.

Section 331

(1) Any person who, as a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognized by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organization or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship, or as a person in a similar position receives, requests or accepts the promise of a bribe in connection with the exercise of his office, either directly or through an intermediary, shall be punished by imprisonment for a term of five to twelve years.

(2) The offender shall be punished by imprisonment for a term of ten to fifteen years if he commits the offence referred in paragraph 1 at a large scale.

155. In the statistics provided by the Slovak Republic it was indicated that no investigations, prosecutions or judgments had been taken forward under these provisions in 2010 or 2011. During the country visit, the Special Prosecution Office informed the

reviewing experts that they are currently presiding over one investigation in relation to the above offences.

(b) Observations on the implementation of the article

156. Noting that the provision under review is an optional offence, the reviewing experts deemed the Slovak Republic to have legislatively implemented this provision.
157. However, as with section 16(a) of the Convention, the reviewing experts noted that there was little evidence of serious efforts on the part of the authorities to enforce the offences cited by the Slovak Republic as evidence of their implementation of this provision of the Convention.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

158. The Slovak Republic indicated that it had implemented this provision of the Convention, citing sections 213 (Embezzlement), 326 (Abuse of power by a public official) and 327 (Obstructing the performance of duties by public officials) of the Criminal Code.

Criminal Code

Section 213. Embezzlement

- (1) Any person who takes possession of property of another that has been entrusted to him, thus causing small damage to the property belonging to another, shall be liable to a term of imprisonment of up to two years.
- (2) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to in paragraph 1,
- a) and causes larger damage through its commission,
 - b) by reason of specific motivation,
 - c) in the capacity of a person who has been charged with a special duty to protect the interests of the injured party or who has been appointed trustee in bankruptcy, or
 - d) acting in a more serious manner.
- (3) The offender shall be liable to a term of imprisonment of three to ten years if he commits the offence referred to in paragraph 1, and causes substantial damage through its commission.
- (4) The offender shall be liable to a term of imprisonment of ten to fifteen years if he commits the offence referred to in paragraph 1,
- a) and causes large-scale damage through its commission,
 - b) as a member of a dangerous grouping, or
 - c) under a crisis situation.

Section 326. Abuse of power by a public official

- (1) A public official who, with the intent to cause damage to other person, or to obtain undue benefits for himself or other person,
- a) exercises his powers in an unlawful manner,
 - b) exceeds his legal authority, or
 - c) fails to fulfill a duty resulting from his legal authority or from a court decision, shall be punished by imprisonment for a term of two to five years.

- (2) The offender shall be punished by imprisonment for a term of four to ten years if he commits the act referred to in paragraph 1
 - a) as a result of more serious misconduct,
 - b) against a protected person, or
 - c) because of a particular reason.
- (3) The offender shall be punished by imprisonment for a term of seven to twelve years if he commits the act referred to in paragraph 1
 - a) and causes grievous bodily harm or death,
 - b) and causes substantial damage, or
 - c) in order to obstruct or hinder the exercise of fundamental rights and freedoms of another person.
- (4) The offender shall be punished by imprisonment for a term of ten to twenty years if he commits the act referred to in paragraph 1
 - a) and causes grievous bodily harm to several persons or the death of several persons,
 - b) and causes large-scale damage,
 - c) in a crisis situation.

Section 327. Obstructing the performance of duties by public officials

- (1) A public official who obstructs the performance of an important duty in the exercise of his authority shall be punished by imprisonment for a term of up to two years.
- (2) The offender shall be punished by imprisonment for a term of one to five years if by committing the act referred to in paragraph 1 he causes substantial damage or other particularly serious consequence.

(b) Observations on the implementation of the article

- 159. The governmental experts noted sections 124-126 and 139 of the Criminal Code which define damage, including “small damage”, as referred to in section 213 of the Criminal Code.

Criminal Code

Section 124. Damage

- (1) For the purposes of this Act, **damage** shall mean harm to property or actual loss of assets or prejudice to the rights of the injured party or other harm, which has a causal relationship with the criminal offence irrespective of whether the harm has been caused to a thing or to the rights. For the purposes of this Act, damage shall also mean advantage gained in causal relationship with the criminal offence.
- (2) Damage within the meaning of paragraph 1 shall also mean the loss of profit to which the injured party, considering the circumstances and his personal situation, would otherwise be entitled or could reasonably expect to obtain.

Section 125

- (1) Small damage shall mean the damage amounting to more than SKK 8,000. Larger damage shall mean the damage which is at least ten times higher than the aforesaid amount. Substantial damage shall mean the damage which is at least one hundred times higher than the aforesaid amount. Large-scale damage shall mean the damage which is at least five hundred times higher than the aforesaid amount. These criteria shall also be used to determine the amount of benefit, the value of a thing, and the scope of the offence.
- (2) Where the Special Part of this Act requires that the basic elements of the criminal offence include infliction of damage as a property consequence of the criminal offence without specifying its amount, such damage shall be understood as at least a small damage.

- 160. The reviewing experts noted section 213 of the Criminal Code which criminalises the offence of Embezzlement. This offence is not restricted to the embezzlement of property in the public sector but instead covers the taking by an individual of “the property of another that has been entrusted to him”. Furthermore, the reviewing experts noted the requirement under section 213 of the Criminal Code that, in order for the offence to be proven, “small damage” must be shown to have been caused to the property belonging to another. This appeared to the experts to not match exactly the requirements of the

Convention which require the criminalisation of Embezzlement in all circumstances, irrespective of the amount of damage caused as a result of the Act.

161. It was further noted that the amount of damage indicated as meaning “small amount” in section 125 of the Criminal Code was detailed in Slovakian Kronas, a currency no longer in use, and as such it was difficult for the reviewing experts to come to a conclusion as to the level of damage required before the offence of Embezzlement could be proved.
162. During the country visit, it was pointed out to the reviewing experts that embezzlement is not considered a corruption-related offence in the Slovak Republic and therefore is dealt with by the Police, General Prosecution Service and common Courts rather than the specialised investigatory, prosecution and judicial system for corruption related offences.
163. The reviewing experts noted that the statistics as regards the implementation of the offence of Embezzlement under section 213 of the Criminal Code demonstrated that 1132 investigations had been launched in 2010 with 110 prosecutions commenced and 93 sentences given by the Courts. The reviewing experts noted that this represented a successful attempt by the law enforcement authorities to enforce these domestic implementing provisions.
164. The reviewing experts indicated that there was a generally good level of compliance by the Slovak Republic in relation to Article 18 of the Convention. However, the reviewing experts noted that to improve compliance further, the Slovak Republic may wish to remove the requirement of damage in section 213 of the Criminal Code so as to allow for prosecution in all cases of Embezzlement, regardless of the amount of damage caused.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

165. The Slovak Republic stated that it was in compliance with this provision of the Convention, citing paragraph 2 of section 336 of the Criminal Code.

Criminal Code

Section 336. Trading in Influence

(2) Any person who, either directly or through an intermediary, promises, offers or gives a bribe to another person in order to make that person use his influence on the execution of duties by persons referred to in Sections 332 and 333 or for having used that influence, or gives, offers or promises a bribe to a third party for the same reason, shall be liable to a term of imprisonment of up to two years.

166. As an example of the implementation of this domestic provision, the Slovak Republic cited Case No. Pk-1T/10/2010. In this case, the Specialized Criminal Court found guilty two offenders who paid a bribe of €5.000 to the person who promised to manage for their benefit the custom procedure led against them in the custom office in Košice relating to unlawful using and storage of mineral oils.

(b) Observations on the implementation of the article

167. During the country visit, the reviewing experts questioned whether the reference to “bribe” in section 336(2) was sufficiently broad so as to cover the promising, offering of giving of any “undue advantage” as required by Article 18 UNCAC. Officials from the Slovak Republic confirmed that bribery is defined broadly under section 131(3) of the Criminal Code, providing that a “bribe shall mean a thing or other transaction of property or non-property nature to which there is no legal entitlement” and as such would cover any undue advantage as required by the Convention.

168. The reviewing experts also requested clarification as to whether section 336(2) would cover the offer of an undue advantage to an individual who has “supposed influence”, as required by the Convention. The Slovak Republic confirmed that where an individual offered or gave a bribe to another person who did not, in reality, have the influence in relation to which the bribe was given, the individual offering the bribe would not be capable of being prosecuted under this, or any other, section of the Criminal Code.

169. The governmental experts confirmed that the Slovak Republic were broadly in compliance with this provision of the Convention.

170. **Recommendation:** The governmental experts recommend that the definition of trading in influence be amended to include a reference to “supposed influence” so as to ensure that the circumstances outlined in the above paragraph are criminalised, as required by the Convention.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

171. The Slovak Republic indicated that it was in compliance with this provision of the Convention, citing paragraph 1 of section 336 of the Criminal Code.

Criminal Code
Section 336. Trading in Influence

(1) Any person who, either directly or through an intermediary, receives, requests or accepts the promise of a bribe for using or having used his influence on the execution of duties by persons referred to in Sections 328, 329, 330 and 331, shall be liable to a term of imprisonment of up to three years.

172. As an example of the enforcement of this provision, the Slovak Republic cited Case No. 1T 22/2010 in which the Specialized Penal Court found guilty an offender who asked for a bribe of €2.000 from women petitioning Social Insurance Company for a disability pension in order to influence the decision of the SIC in this regard.

(b) Observations on the implementation of the article

173. During the country visit, and as above, the governmental experts requested information as to whether section 336 (1) would cover a situation in which an individual received a bribe in relation to his or her “supposed influence” as opposed to their actual influence. The national authorities noted that, in such circumstances, any individual receiving a bribe would be prosecuted under section 221 of the Criminal Code (Fraud) rather than under section 336(1).

**Section 221
Fraud**

(1) Any person who enriches himself or other to the detriment of another person’s property through misrepresentation of another person or through taking advantage of another person’s mistake, and thus causes small damage to the property of another, shall be liable to a term of imprisonment of up to two years.

174. In this regard, the experts noted that the maximum penalty available under section 336 of the Criminal Code (i.e. up to three years imprisonment) would be less severe than those under the offence fraud (i.e. maximum penalty up to 15 years imprisonment) where aggravating factors were taken into account.
175. The reviewing experts also noted that statistical information provided by the Slovak Republic in relation to the offence of trading in influence. These statistics indicated that in 2010 there had been 5 investigations, 5 prosecutions and 5 convictions under section 336 of the Criminal Code. In 2011, 18 investigations were launched with 1 prosecution brought forward and 1 conviction obtained.
176. The reviewing experts considered the Slovak Republic to be in broad compliance with Article 18(b) of the Convention.
177. **Recommendation:** The reviewing experts noted that that the Slovak Republic may wish to amend the definition of trading in influence under section 336 of the Criminal Code so as to include reference to a situation in which a bribe is received by an individual in relation to his supposed rather than actual influence.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

178. The Slovak Republic cited section 326 of the Criminal Code as evidence of their implementation of this provision of the Convention.

Section 326

Abuse of Power by a Public Official

(1) A public official who, with the intention of causing damage to another or obtaining undue benefit for himself or another,

- a) exercises his powers in an unlawful manner,
- b) exceeds his legal authority, or
- c) fails to fulfil a duty resulting from his legal authority or from a court decision, shall be liable to a term of imprisonment of two to five years.

179. Slovakia provided a statistical breakdown of the number of individuals investigated, prosecuted and sentenced for criminal offences under various sections of the Criminal Code. In 2010, 119 investigations were carried out with 110 prosecutions brought forward and 93 convictions obtained. In 2011, 72 officials had been subject to an investigation with 41 prosecutions and 28 convictions obtained.

(b) Observations on the implementation of the article

180. During the country visit, governmental experts requested clarification as to whether the reference to a public official “obtaining an undue benefit for himself or another” would cover the requirements of Article 19 of the Convention which relates to “obtaining an undue advantage for himself or for another person or *entity*”. Officials from the Slovak Republic confirmed that the reference in section 326(1) to “or another” was deemed to included legal persons and therefore covered the requirements of UNCAC Article 19 as regards its reference to “entity”.

181. The reviewing experts considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

182. The Slovak Republic stated that it had partially implemented the provision under review, citing the Proof of Origin Act, Coll. 101/2010.

(b) Observations on the implementation of the article

183. Sections 1- 9 of the Proof of Origin Act were deemed relevant by the reviewing experts to the provision under review.

Act of 4 March 2010 on the Proof of Origin of Property

Section 1

The purpose of this Act is to stipulate conditions and procedures of public authorities in forfeiture of immovable property, movable assets, apartments and non-housing premises, other property rights and other asset values, funds in cash in Euros and foreign currency, deposits in banks and foreign bank branches in Euros and foreign currency and deposits in banks residing abroad (hereinafter referred to as “property”) to a natural person and legal person (“hereinafter referred to as “person”) about which the court in proceedings under this Act declared that they have acquired the property from illegal income.

Section 2

This Act is followed also in case a person was imposed a fine, forfeiture of a thing or the court adjudicated confiscation of a part of property ¹⁾ of a person or the person owns other property stated in the provision of Section 1 which is impossible to prosecute under Penal Code.

Section 3

- (1) If public authority has a substantial suspicion that property of a person has been acquired from illegal income, it shall be obliged without undue delay to notify the service of financial Police of Police Force (hereinafter referred to as “financial police”) in writing. If financial police detect facts according to the first sentence while performing its powers, they shall act under this Act based on its own suggestion.
- (2) Financial police shall receive written notifications of natural persons or legal persons (hereinafter referred to as “promulgator”) about reasonable suspicions suggesting acquisition of property from illegal income in the scope stated in this Act. The notification must obviously state who is submitting, the subject-matter covered, which person it is directed against and what is notified. Promulgator shall identify property which the notification is directed against. The notification must be signed and if submitted by a legal person, stamped.
- (3) Financial police shall verify the identity of promulgator. Financial police shall not consider written notifications under Section 2 where the following shall not be stated:
 - a) name, surname and domicile or business name or name and seat of promulgator,
 - b) which person the notification is directed against and what it relates to.
- (4) If written notification under Sections 1 or 2 was delivered to other service of Police Force or other public authority than financial police, the one shall submit the matter without undue delay to financial police and inform promulgator accordingly.

Section 4

- (1) Based on written notification or own suggestion, financial police shall under Section 3 investigate revenues, value of property and the way of acquisition of property of a person who the notification is directed against, provide records, require explanations, trace and ensure evidence necessary for submission of suggestion under Section 6 and perform other necessary measures.
- (2) Value of property shall for the purposes of this Act mean price for what a person acquired the property; if the price is possible to detect with inadequate difficulties only or if it is impossible to detect, the value of property is to be understood price common in the place and at the time of acquisition of property.
- (3) When investigating under Section 1, financial police shall cooperate with other public authorities, legal persons and natural persons. These authorities and persons shall be obliged to provide financial police with all necessary interoperation in identified limit, handle its requests and inform about the requested data; obligation to handle requests shall not relate to natural persons.
- (4) Financial police shall be authorized to request explanations from anybody who can contribute to clarify the value of property and way of acquisition of property. Explanation may be refused by the one who would implicate himself or other persons close to him the danger of criminal prosecution or disciplinary action for the offence. Financial police shall make a report of explanation or refusal of explanation.
- (5) When investigating under Section 1, financial police shall be authorized to:
 - a) enter any place of business or business premises, as well as conveyances used for business purposes for the purpose of inspecting documents under subsection b),
 - b) inspect the record-keeping, accounting written documents, papers and other documents, files and records kept on a data carrier, and to take excerpts, notes and copies of them,
 - c) request from banks and foreign bank branches the reports on their clients matters or foreign bank branches even if being subject to bank secrecy.)

Section 5

(1) Performance of notification obligation reporting under Section 3 (1) and obligation to provide interoperation under Section 4 shall not be restricted by obligation to keep secret vested by law under special regulation,) unless this Act stipulates otherwise.

(2) Notification obligation under Section 3 (1) and obligation to provide interoperation under Section 4 shall not be restricted to a person if it concerns information obtained on the customer in connection with the provision of legal advice under special regulation or if provision of the information would be in conflict with obligations of the Slovak Republic under international agreement promulgated the way vested by law or legally binding acts of the European Union.)

(3) Interoperation may be refused under Section 4 also by a person who would, if doing so, breach confessional secrecy or the secrecy of information entrusted to him in writing or verbally as to a person entrusted with pastoral care under the seal of secrecy.

Section 6

(1) Financial police shall submit to a prosecutor competent under Section 3 suggestion for submission of proposal to take proceedings to voice that property has been at least 1500-multiple of minimum wage ⁶⁾ higher than provable income.

(2) Suggestion under Section 1 shall include:

- a) identification of submitting authority,
- b) name, surname, domicile and date of birth of a natural person or business name, seat and identification number of a legal person (hereinafter referred to as "identification data") whose property is to be proclaimed to be acquired from illegal income,
- c) result of investigation of income, value of property and the way of acquisition of property,
- d) facts and identification of evidence indicating that value of property of a person exceeds provable property in at least 1500-multiple of minimum wage,
- e) date and place of submission,
- f) signature of authorized officer of financial police.

(3) Proceedings under this Act shall be in the competence of a prosecutor in whose district the court is situated which is under general regulation on trial by court competent to take proceedings on suggestion under Section 8.

Section 7

(1) Prosecutor shall check the suggestion submitted under Section 6, especially he shall check data and evidence under Section 6 (2) (c) and (d). If the prosecutor considers it necessary to complete or perform additional investigation of income, value of property and the way of acquisition of property of a person, he shall request financial police to complete or additionally investigate. Financial police shall be obliged to allow for a claim of prosecutor in identified time limit.

(2) Prosecutor shall request a person identified in suggestion to explain or submit evidence about the way he acquired the property identified in suggestion and value of that property; the person shall be obliged to allow for a claim of prosecutor within 30 days following delivery of the request. Explanation shall be understood to be especially submitting of documents and identification of other evidence confirming the way of acquisition of property and its value.

Section 8

(1) Prosecutor shall submit proposal on initiation of proceedings to voice acquisition of property from illegal income (hereinafter referred to as "proposal") to the court, if:

- a) from the recognized facts he reasonably concludes that value of property of a person identified in suggestion exceeds provable income which might have been received by a person at least in 1500-multiple of minimum wage, and
- b) a person identified in suggestion shall not explain under Section 7 (2) or his explanation shall not be considered sufficient by prosecutor.

(2) By suggestion, prosecutor shall demand decision to voice acquisition of property from illegal income. In proposal, prosecutor shall, except for requirements under general regulation on trial by court, specify identification data of a person against which the proposal is directed (hereinafter referred to as "appelee") and value of property which is to be voiced to be property acquired from illegal income by decision.

(3) The court may, based on the proposal of prosecutor, by provisional remedy under general regulation on trial by court ⁸⁾ impose appelee not to dispose of certain property in value identified by prosecutor in his proposal.

184. The Slovak Republic noted, as evidence of implementation of this provision of the Convention, the law on the Proof of Origin of Property which has been in force as of 1 January 2011. Based on this Act, in 2011 the Financial Investigation Unit (the responsible

unit for investigating potential situations of the illegal obtention of income) received 60 notifications from natural persons and 9 further cases were identified on the initiative of the FIU itself.

185. From these reports, 44 cases have been commenced but in none of these cases were the Financial Investigation Unit able to send a case to prosecutors for their action under section 6 of the Act. In 39 of these cases the minimum requirements of the Act were not satisfied as regards the identification of the notifying person was or completion of the information required in the notification. In 5 cases, while the aforementioned requirements were satisfied, the value of property was detected as being lower than 1500-multiple of the minimum wage, as required by section 6(1) of the Act and it was therefore not possible to pass the case to a prosecutor for action.
186. In 2011, 1 case was identified which met the requirements of the Act for submitting to respective Prosecutor's Office which is that the property of the subject was at least 1500-multiple of minimum wage after the deduction of provable income. A number of other cases remain under investigation.
187. During the country visit, it was confirmed that there were three circumstances under which the financial police may be notified of potential acquisition of illegal income. These would be through individual natural or legal persons, through a public authority, or through work of the Financial Investigation Unit on its own initiative. Where a notification by a natural person is provided, this cannot be done on an anonymous basis.
188. Under section 4(2) of the Act the value of an individual's property is the value at which it was originally bought. Members of the Financial Investigation Unit indicated that this often meant that individuals were able to hide the amount of money embezzled through fraudulent real estate transactions. It was felt that this often led to investigators being frustrated in their efforts at proving the amount acquired being 1500 times the minimum wage in the Slovak Republic.
189. As regards the threshold amount for prosecution outlined in section 6(1) of the Act (1500 x the minimum wage) it was confirmed by officials from the Financial Investigation Unit that this was calculated as being 480,900 Euros. The Unit confirmed that five cases in which a substantial amount of unexplained property had been proved to have been obtained by individuals had to be discontinued as they did not meet the requirements of section 6(1).
190. As regards cooperation with public authorities, the Financial Investigation Unit indicated that strong links had, in particular, been developed with tax authorities.
191. Income and asset declarations, required of public officials under Act 101/2010 are assessed by the individual Ministries for whom public officials are working. Each individual Ministry is responsible for verifying the asset declarations of their officials and can require individuals to require certain matters if the Asset Declaration indicates some unusual monetary amounts or property. Private persons are not required to complete asset declarations under these provisions.
192. The FIU is also able to complement its powers under the Act on the Proof of Origin of Property with powers that are available to it under the Act on the Police Force.

193. International cooperation in relation to these offences has been more problematic. This was explained on the basis that it was more difficult to request information where cooperation was not being sought in relation to a criminal offence but instead a confiscation effort.

194. The reviewing experts noted the above efforts of the Slovak Republic and provided recommendations so as to ensure greater consistency between Article 20 of the Convention and the relevant domestic provisions of the Slovak Republic.

Recommendation: The Slovak authorities should consider the reduction of the threshold amount outlined in section 6(1) of Act 101/2010 which is required before a case may be passed by the Financial Investigation Unit to the Special Prosecutors Office.

From discussions with members of both the Financial Investigation Unit and the Prosecutors Office it was clear that this threshold, which the reviewing experts considered to be excessively high, was the key barrier to the commencement of prosecutions under this provision.

Recommendation: The Slovak authorities should consider amending section 4(2) of Act 101/2010 in order that the actual rather than the purchase value of property obtained by an individual may be taken into account as part of their estate where the Financial Investigation Unit consider that property may have been obtained as a result of a transaction at an undervalue.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

195. The Slovak Republic indicated that they had implemented this provision of the Convention, citing section 332 of the Criminal Code.

Criminal Code

Section 332. Active Bribery

(1) Any person who, either directly or through an intermediary, promises, offers or gives a bribe to another person to make that person act or refrain from acting, and thus breaches his duties resulting from his employment, profession, position or function, promises, offers or gives a bribe for the same reason to a third party, either directly or through an intermediary, shall be liable to a term of imprisonment of up to three years.

(2) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to in paragraph 1 acting in a more serious manner.

(3) The offender shall be liable to a term of imprisonment of four to ten years if he commits the offence referred to in paragraph 1 on an extensive scale.

196. No examples of case-law of implementation of these domestic provisions were provided by Slovakia.

197. Statistical data was provided by Slovakia outlining the number of individuals investigated, prosecuted and sentenced persons for specified criminal offences in Slovakia. Under Section 332 of the Criminal Code 1 individual had been investigated, prosecuted and convicted in 2010 and there had been 3 investigations, 2 prosecutions and 2 convictions obtained in 2011.

(b) Observations on the implementation of the article

198. The governmental experts noted the implementation of this provision of the Convention under section 332 of the Criminal Code. Governmental experts also noted that while the statistics for enforcement of this provision were low, it did demonstrate some effort on the part of the Slovak Republic to practically implement Article 21(a) of the Convention.

199. The reviewing experts and governmental officials discussed the comparative scope of Section 332 and Section 333 of the Criminal Code (see above). Prosecutors from the Slovak Republic confirmed that in principle both provisions were capable of application both to bribery in the public and private sector. However, in practice, section 332 was used for prosecutions in relation to bribery in the private sector while section 333 was used in relation to bribery in the public sector. This was due to the requirement under section 333 of the Criminal Code that the act of bribery take place in relation to “procurement of a thing of general interest”, meaning that giving of the bribe was in some way damaging to the public interest. This requirement was far more likely to be satisfied in the context of public officials than private individuals. This damage to the public interest required under Section 333 of the Criminal Code is also reflected in the severity of the penalties available under this provision which are significantly higher than those available under section 332.

200. The reviewing experts considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

201. The Slovak Republic stated that they were in compliance with this provision of the Convention, citing section 328 and 329 of the Criminal Code.

Criminal Code

Section 328

- (1) Any person who, either directly or through an intermediary, receives, requests or accepts the promise of a bribe for himself or another for acting or refraining from acting, and thus breaches his duties resulting from his employment, occupation, position or function, shall be liable to a term of imprisonment of two to five years.
- (2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1 acting in a more serious manner.
- (3) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1 on an extensive scale.

202. Statistical data was provided by Slovakia outlining the number of investigations, prosecutions brought and the number of sentences obtained under section 328 of the Criminal Code. These statistics indicated that under section 328 of the Criminal Code, 4 investigations had been commenced in 2010, resulting in 1 prosecution and 1 conviction.

(b) Observations on the implementation of the article

203. The governmental experts noted that both section 328 and 329 of the Criminal Code could, in principle, be used to prosecute individuals found to have received a bribe in the private sector but that, for the reasons given above in the discussion of Article 21(a) of the Convention, section 328 was in practice the only provision used in relation to that type of offence.

204. The governmental experts considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

205. Slovakia confirmed that it had implemented this provision of the Convention and cited sections 213 and 326 of the Criminal Code which relate to embezzlement and abuse of power by a public official, respectively.

Section 213. Embezzlement

- (1) Any person who takes possession of property of another that has been entrusted to him, thus causing small damage to the property belonging to another, shall be liable to a term of imprisonment of up to two years.
- (2) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to in paragraph 1,
- a) and causes larger damage through its commission,
 - b) by reason of specific motivation,
 - c) in the capacity of a person who has been charged with a special duty to protect the interests of the injured party or who has been appointed trustee in bankruptcy, or
 - d) acting in a more serious manner.
- (3) The offender shall be liable to a term of imprisonment of three to ten years if he commits the offence referred to in paragraph 1, and causes substantial damage through its commission.

- (4) The offender shall be liable to a term of imprisonment of ten to fifteen years if he commits the offence referred to in paragraph 1,
- a) and causes large-scale damage through its commission,
 - b) as a member of a dangerous grouping, or
 - c) under a crisis situation.

(b) Observations on the implementation of the article

206. During the country visit, the national authorities informed the governmental experts that embezzlement (i.e. 213 of the Criminal Code) would fall under the mandate of the General Prosecutor's Office, not the Specialized Prosecutor's Office. Therefore, the Bureau for the Fight against Corruption would not be responsible for investigating such a case. Instead, such an offence would be investigated by the Police, and then, if there was sufficient evidence, the case would be taken to the General Prosecutor's Office and if there was a *prima facie* case, would be taken to General Court (as opposed to the Specialised Court used in relation to corruption offences).
207. The governmental experts noted that the offence of embezzlement under section 213 of the Criminal Code was a broad-based offence covering both the public and private sector. Consequently, the comments and recommendations by the governmental experts in relation to Article 17 of the Convention as regards the requirement of damage in section 213 are equally applicable to this provision.
208. Subject to the above comments, the reviewing experts considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) *The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

(a) Summary of information relevant to reviewing the implementation of the article

209. Slovakia stated that it was in compliance with this provision of the Convention, citing section 231, 233 and 339 of the Criminal Code.

**Criminal Code
Section 231
Sharing**

- (1) Any person who conceals, transfers to himself or another, leases or accepts as a deposit
- a) a thing obtained through a criminal offence committed by another person, or
 - b) anything procured in exchange for such a thing,
- shall be liable to a term of imprisonment of up to three years.

Criminal Code

Section 233

(1) Any person who performs any of the following with regard to income or other property obtained by crime with the intention to conceal such income or thing, disguise their criminal origin, conceal their intended or actual use for committing a criminal offence, frustrate their seizure for the purposes of criminal proceedings or forfeiture or confiscation:

- a) transfers to himself or another, lends, borrows, transfers in a bank or a subsidiary of a foreign bank, imports, transits, delivers, transfers, leases or otherwise procures for himself or another, or
- b) holds, hides, conceals, uses, consumes, destroys, alters or damages, shall be liable to a term of imprisonment of two to five years.

(2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1

- a) by reason of specific motivation, or
- b) and obtains larger benefit for himself or another through its commission.

(3) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1

- a) as a public figure,
- b) and obtains substantial benefit for himself through its commission, or
- c) acting in a more serious manner.

(4) The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence referred to in paragraph 1,

- a) and obtains large-scale benefit for himself or another through its commission,
- b) with respect to things originated from the trafficking in narcotics, psychotropic, nuclear or high risk chemical substances, weapons and human beings or from another particularly serious felony, or
- c) as a member of a dangerous grouping.

Section 339

Aiding and Abetting

(1) Any person who provides assistance to the offender of a crime with the intention of helping him evade the criminal prosecution, imposition or execution of a sentence or protective measure shall be liable to a term of imprisonment of up to three years; if, however, such assistance is provided to the offender who has committed a criminal offence carrying a lesser sentence under this Act, such lesser sentence shall be imposed.

(2) No person who commits the offence referred to in paragraph 1 for the benefit of a close person shall be held criminally liable unless he does so with the intention to

- a) assist a person who committed the criminal offence of high treason pursuant to Section 311, plotting against the Slovak Republic pursuant to Section 312, terror pursuant to Sections 313 and 314, destructive actions pursuant to Sections 315 and 316, sabotage pursuant to Section 317, espionage pursuant to Section 318 or genocide pursuant to Section 418, or
- b) obtain property benefit for himself or another.

(3) No person who commits the offence referred to in paragraph 1 shall be held criminally liable if he was forced to provide such assistance and could not refuse it without putting himself or a close person at the risk of death, bodily harm or other serious harm.

210. As an example of the implementation of these domestic provisions, Slovakia cited the Judgment of the Supreme Court of the Slovak Socialist Republic (R 29/1979) which drew of a distinction between sharing (section 231) and aiding and abetting (section 339).

211. The Slovak Republic provided the following statistical data as regards the enforcement of section 233 of the Criminal Code.

1. Commencement of Investigation: 2010 - 70 cases, 2011 - 125 cases;
2. Filing of charges: 2010 - 15 cases, 29 persons; 2011 - 23 cases, 69 persons;
3. Indictment: 2010 - 16 persons, 2011 - 17 persons;
4. Conviction: 2010 - 7 persons, 2011 - 16 persons.

212. As regards section 339 of the Criminal Code, the Slovak Republic noted that there had been 1 investigation under this offence in 2011.

(b) Observations on the implementation of the article

213. The Act on the Prevention of the Legalisation of the proceeds of Criminal Activity and Terrorist Financing and on Amendments and Supplements to Certain Acts Coll. Law 297/2008 defines the Financial Investigation Unit as the responsible body for the area of prevention and detection of money laundering and terrorist financing. The Act describes in detail the competences of the FIU in relation to this area. The FIU is itself one of departments of the Bureau for Combating Organised Crime of the President of Police Force.

214. During the country visit, the governmental experts were informed that the Criminal Code is the *lex generalis* and that Coll. Law 297/2008 Act was *lex specialis* to the Code, pursuant to section 209 of the Criminal Code.

215. The most relevant provision of Law 297/2008 was identified as being section 2 relating to the legalisation of the proceeds of crime.

Act No. 297/2008 Coll. on the Prevention of Legalisation of Proceeds of Criminal Activity and Terrorist Financing

Section 2. Legalization

(1) Legalization shall be for the purposes of this Act understood intentional conduct consisting in

- a) conversion of nature of property or transfer of property, knowing that the property originates from criminal activity or involvement in criminal activity, with the aim of concealing or disguising the illicit origin of the property or with the aim of assisting a person involved in the commission of such criminal activity to avoid the legal consequences of his conduct,

Section 9. Other Definitions

For the purposes of this Act, the following terms shall be understood as follows

- a) property means any assets irrespective of its nature, in particular movables, immovables, flats, non-residential premises, securities, receivables, legal title to the outcome of intellectual creative activities including industrial property rights, as well as legal documents and deeds certifying the legal title to property or an interest therein,
- j) criminal activity means a criminal activity perpetrated in the territory of the Slovak Republic or outside the territory of the Slovak Republic.

216. In discussions with the reviewing experts, officials from the Prosecutors Office confirmed that the range of predicate offences in relation to which money laundering will be an offence was broadly defined under section 233 of the Criminal Code. Under this provision, money laundering is an offence in relation to *any* form of crime. It was noted that this approach was broader than in many jurisdictions in which the range of crimes in relation to which money laundering is an offence are individually listed. Governmental experts recognised that this gave a broad jurisdiction for prosecutors under section 233 of the Criminal Code.

217. As regards the definition of “property” for the purposes of section 233 of the Criminal Code, officials indicated that this could be found in the interpretative provisions of the Criminal Code.

218. The Slovak Republic informed the reviewing experts that it is a member of the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).
219. The reviewing experts noted that from the texts of Sections 231 and 233 of the Criminal Code, it was not easy to see at first glance how these different offences coexist in practice and how they are used by the courts. The offences under Sections 231 and 233 differ from one another in a number of principle ways. Firstly, Section 231 refers only to sharing in the proceeds of another person's criminal offence, as is made clear by the wording used: "Any person who conceals a thing obtained through a criminal offence committed by another person, or."
220. Section 233, on the other hand, refers to laundering the proceeds of a crime committed by any person. According to the Slovak authorities, self-laundering is thus punishable only pursuant to Section 233.
221. In addition, Section 231 criminalises "sharing"- that is, using or consuming a thing with the aim of benefiting from it, while Section 233 criminalises "legalisation"- i.e. disposing of a thing when motivated by an effort to conceal such income or thing, disguise their criminal origin, conceal their intended or actual use for committing a criminal offence, frustrate their seizure for the purposes of criminal proceedings or forfeiture or confiscation. Furthermore, Section 231 involves a thing gained by a criminal offence or a thing gained in exchange for such a thing, while Section 233 involves income or other property obtained by crime.
222. The reviewing experts confirmed that through the combination of offences outlined above, they considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

223. Slovakia confirmed its implementation of the provision of the Convention, citing section 231 and 233 of the Criminal Code (see above).

(b) Observations on the implementation of the article

224. The governmental experts noted the implementation of this provision of the Convention by Slovakia, specifically through the combined scope of sections 231 and 233 of the Criminal Code (Concealment).

225. The governmental experts considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

226. Slovakia confirmed that it had implemented this provision of the Convention through section 231 and 233 (see above) of the Criminal Code.

227. Statistical data, produced above, was provided by the Slovak Republic with regarding to the enforcement of section 233 of the Criminal Code.

(b) Observations on the implementation of the article

228. The governmental experts concluded that the Slovak Republic had fully implemented this provision of the Convention.

229. Specifically, the reviewing experts noted section 233(1) which, in relation to the proceeds of crime, criminalises any attempt to “conceal such income or thing, disguise their criminal origin...”

230. The reviewing experts also noted the attempts by the authorities to enforce this provision of the Criminal Code, as demonstrated in the statistics provided by the Slovak Republic.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

231. The Slovak Republic stated that it was in compliance with this provision of the Convention, citing sections 13-14 and sections 19-21 of the Criminal Code.

Section 13. Preparation for Committing a Felony

- (1) Preparation for committing a felony means willful organization of a criminal act, procurement or adaptation of means or instruments for its commission, associating, grouping, instigating, contracting, abetting or aiding in such crime, or other deliberate actions designed to create conditions for its commission, where a felony has been neither attempted nor completed.
- (2) Preparation for committing a felony shall carry the same punishment as the felony, for which it has been intended.
- (3) The punishability of the preparation for committing a felony shall become extinguished if the offender willfully
- a) stopped performing the action leading to the commission of a felony, and removed the threat to an interest protected under this Act presented by the preparation, or
 - b) gave information about the preparation for committing a felony at such time when it was still possible to remove the threat to an interest protected under this Act presented by the preparation. Such information shall be submitted to the authorities with competence for criminal proceedings or to the Police Force.
- Members of the armed forces may give such information to their superior officers. Persons serving their imprisonment sentences or remanded in custody may give such information also to the officers of the Corps of Prison and Court Guard of the Slovak Republic.
- (4) The application of paragraph 3 does not, however, prejudice the criminal liability of the offender for a different criminal offence he had already committed through such an action.

Section 14. Attempted Criminal Offence

- (1) An attempted criminal offence is an action directly leading to the completion of a criminal offence preformed by an offender with the intent to commit a criminal offence, which has not been completed.
- (2) The attempted criminal offence shall carry the same punishment as the completed criminal offence.
- (3) The punishability of the attempted criminal offence shall become extinguished if the offender willfully
- a) stopped performing the action leading to the completion of a criminal offence, and removed the threat to an interest protected under this Act presented by the attempt, or
 - b) gave information about the attempted criminal offence at such time when it was still possible to remove the threat to an interest protected under this Act presented by the attempt. Such information shall be submitted to the authorities with competence for criminal proceedings or to the Police Force. Members of the armed forces may give such information to their superior officers. Persons serving their imprisonment sentences or remanded in custody may give such information also to the officers of the Corps of Prison and Court Guard of the Slovak Republic.
- (4) The application of paragraph 3 does not, however, prejudice criminal liability of the offender for a different criminal offence he had already committed through such an action.

Section 19. Offender

- (1) An offender of a criminal offence is the person who committed a criminal offence acting on his own.
- (2) Only a natural person may be considered as the offender of a criminal offence.

Section 20. Accomplice

If a criminal offence was committed by two or more persons acting in conjunction (accomplices), each of them has the same criminal liability as the single person who would commit such a criminal offence.

Section 21. Abettor

- (1) An abettor to a completed or attempted criminal offence is any person who intentionally
- 1) masterminded or directed the commission of a criminal offence (organiser)
 - 2) instigated another person to commit a criminal offence (instigator),
 - 3) asked another person to commit a criminal offence (hirer),
 - 4) assisted another person in committing a criminal offence, in particular by procuring the means, removing the obstacles, providing an advice, strengthening the determination, making a promise of post crime assistance (aider).
- (2) Unless this Act provides otherwise, the criminal liability of an abettor.

232. Statistical data was not available in relation to these offences as Slovak statistical data systems records criminal offences without noting that they were committed in the stage of

preparation, attempt or if they were fully committed, and without noting if they were committed by the independent offender, co-offender, assistant or instigator. All these form of participation and all mentioned phases of committing of criminal offences are punishable by the same term of imprisonment as fully committed offences are.

233. The participation, aiding, abetting, facilitating or counseling of an offence is not registered separately.

(b) Observations on the implementation of the article

234. The governmental experts noted that the general provisions cited by Slovakia acted to ensure that those who sought to facilitate, aid, abet or assist an act criminalised under the provisions cited above would also be guilty of an offence.
235. Act 297/2008 was also cited by the Slovak Republic, with particular reference to Section 2(1)(d) which states that the Legalization of the proceeds of crime will include associated with or assisting in the preparation of such an offence.

Act No. 297/2008 Coll. on the Prevention of Legalisation of Proceeds of Criminal Activity and Terrorist Financing

Section 2. Legalization

- (1) Legalization shall be for the purposes of this Act understood intentional conduct consisting in
- d) involvement in action under letters a) to c), even in the form of association, assistance, instigation and incitement, as well as in attempting such action.
- (2) Knowledge, intention or purpose required in actions referred to in subsection 1 may result from objective factual circumstances, especially from the nature of an unusual transaction.

236. The reviewing experts noted that the definition of the offence of the legalisation of the proceeds of crime under section 233 of the Criminal Code may not be sufficiently broad, even when read in light of the general provisions cited above by the Slovak Republic, to include “conspiracy to commit” the offences outlined in Article 23 of the Convention. However, it was concluded that the wording of section 13 of the Criminal Code was sufficiently broad so as to cover this scenario.
237. Consequently, the reviewing experts agreed that the Slovak Republic had fully implemented this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (a)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(a) Summary of information relevant to reviewing the implementation of the article

238. As in relation to previous sections of this Article Slovakia cited section 233 of the Criminal Code as evidence of compliance with the requirements of the Convention.

(b) Observations on the implementation of the article

239. As noted above, during discussions between the reviewing experts and prosecutors from the Slovak Republic, it was noted that the offence of Legalisation of the proceeds of crime under section 233 of the Criminal Code was applicable to all criminal offences.

240. The reviewing experts considered this to be a broad approach to the issue of predicate offences and as such found the Slovak Republic to be in full compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

241. The Slovak Republic cited section 233 of the Criminal Code.

(b) Observations on the implementation of the article

242. As noted above, during discussions between the reviewing experts and prosecutors from the Slovak Republic, it was noted that the offence of Legalisation of the proceeds of crime under section 233 of the Criminal Code was applicable to all criminal offences.

243. The reviewing experts considered this to be a broad approach to the issue of predicate offences and as such found the Slovak Republic to be in full compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

244. The Slovak Republic cited sections 3 – 7 of the Criminal Code as evidence of the implementation of this provision of the Convention.

Section 3. Territorial Applicability

(1) This Act shall be applied to determine the criminal liability for an act committed on the territory of the Slovak Republic.

(2) The criminal offence is considered as having been committed on the territory of the Slovak Republic even if the offender

a) committed the act, at least in part, on its territory, if the actual breach of or threat to an interest protected under this Act took place or was intended to take place, in whole or in part, outside of its territory, or

b) committed the act outside of the territory of the Slovak Republic, if the actual breach of or threat to an interest protected under this Act was intended to take place on its territory, or such a consequence should have taken place, at least in part, on its territory.

(3) This Act shall also be applied to determine the criminal liability for an act committed outside of the territory of the Slovak Republic aboard a vessel navigating under the State flag of the Slovak Republic, or aboard an aircraft entered in the aircraft register of the Slovak Republic.

Section 4. Personal Applicability

This Act shall also be applied to determine the criminal liability for an act committed outside of the territory of the Slovak Republic by a Slovak national or a foreign national with permanent residency status in the Slovak Republic.

Section 5

This Act shall also be applied to determine the criminal liability for a particularly serious felony if the act was committed outside of 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.

Section 5a

This Act shall be applied to determine the criminal liability for the criminal offence of illicit manufacturing and possession of narcotics or psychotropic substances, poisons or precursors, and trafficking in them (Section 171 and 172) forgery, fraudulent alteration and illicit manufacturing of money and securities (Section 270), uttering counterfeit, fraudulently altered and illicitly manufactured money and securities (Section 271), manufacturing and possession of instruments for counterfeiting and forgery (Section 272), forgery, fraudulent alteration and illicit manufacturing of duty stamps, postage stamps, stickers and postmarks (Section 274), forgery and fraudulent alteration of control technical measures for labeling goods (Section 275), establishing, masterminding and supporting a terrorist group or its member (Section 297), illicit manufacturing and possession of nuclear materials, radioactive substances, hazardous chemicals and hazardous biological agents and toxins (Section 298 and 299), plotting against the Slovak Republic (Section 312), terror (Section 313 and 314), destructive actions (Section 315 and 316), sabotage (Section 317), espionage (Section 318), assaulting a public authority (Section 321), assaulting a public official (Section 323), counterfeiting and altering a public instrument, official seal, official seal-off, official emblem and official mark (Section 352), jeopardizing the safety of confidential and restricted information (Section 353), smuggling of migrants (Section 355), endangering peace (Section 417), genocide (Section 418), terrorism and some forms of participation on terrorism (section 419), brutality (Section 425), using prohibited weapons and unlawful warfare (Section 426), plundering in the war area (Section 427), misuse of internationally recognized and national symbols (Section 428), war atrocities (Section 431), persecution of civilians (Section 432), lawlessness in the wartime (Section 433), even if such act was committed outside of the territory of the Slovak Republic by an alien who has not his/her permanent residence on the territory of the Slovak Republic.

Section 6

(1) This Act shall be applied to determine the criminal liability for an act committed outside of the territory of the Slovak Republic by a foreign national who does not have a permanent residency status in the Slovak Republic also where

a) the act gives rise to criminal liability under the legislation effective on the territory where it was committed,

b) the offender was apprehended or arrested on the territory of the Slovak Republic, and

c) was not extradited to a foreign State for criminal prosecution purposes.

(2) However, the offender referred to in paragraph 1 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.

Section 7. Applicability under International Instruments

- (1) This Act shall be applied to determine the criminal liability also when it is prescribed by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.
- (2) Provisions of Sections 3 through 6 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.

245. The governmental experts also cited section 9(j) of the Act No. 297/2008 Coll. On the Prevention of Legalisation of Proceeds of Criminal Activity and Terrorist Financing as an example of the legislative implementation of the provision under review.

Act No. 297/2008 Coll. on the Prevention of Legalisation of Proceeds of Criminal Activity and Terrorist Financing
Section 9. Other Definitions

For the purposes of this Act, the following terms shall be understood as follows

- j) criminal activity means a criminal activity perpetrated in the territory of the Slovak Republic or outside the territory of the Slovak Republic.

(b) Observations on the implementation of the article

246. The reviewing experts noted the provisions cited by the Slovak Republic. Further clarification was requested regarding whether an offence committed outside of the jurisdiction of the Slovak Republic committed by a non-Slovak national would represent a predicate offence for the purposes of section 233 of the Criminal Code.

247. Prosecutors from the Special Prosecutors Office confirmed that where money-laundering is carried out on the territory of the Slovak Republic, predicate offences will include any crime committed in any jurisdiction.

248. In light of the domestic legislation cited and the result of the above discussions between the reviewing experts and the prosecution services, the reviewing experts considered that this provision of the Convention had been fully implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

249. Slovakia confirmed that it had furnished copies of its laws that give effect to this provision to the Secretary General of the United Nations.

(b) Observations on the implementation of the article

250. The governmental experts noted the implementation of the provision by Slovakia.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

251. The Slovak Republic noted that its domestic legal system does not contain fundamental principles of the type referred to in this provision of the Convention.

(b) Observations on the implementation of the article

252. Following discussions between prosecutors from the Special Prosecution Office and the reviewing experts it was confirmed that section 233 of the Criminal Code allows for the prosecution of an individual for the legalisation (laundering) of the proceeds of a crime that he himself committed.

253. Consequently, the reviewing experts concluded that Slovakia had gone beyond the minimum requirements of this provision of the Convention.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

254. Slovakia stated that their domestic provisions were in accordance with this provision of the Convention, citing section 231 of the Criminal Code.

Sharing Section 231

(1) Any person who conceals, transfers to himself or another, leases or accepts as a deposit
a) a thing obtained through a criminal offence committed by another person, or
b) anything procured in exchange for such a thing,
shall be liable to a term of imprisonment of up to three years.

255. Slovakia was not able to provide statistical data regarding the number of individuals charged or successfully prosecuted with this provision of the Criminal Code.

(b) Observations on the implementation of the article

256. It was noted during discussions between the reviewing experts and Slovakian officials that in relation to the offence of Sharing (Concealment), in contrast with the mainstream corruption offences outlined above, the investigation would be carried out by regular Police officers, prosecution taken forward by the General Prosecutor's Office and common Courts used for the hearing. As noted above, in relation to mainstream corruption offences a specialised system of investigation, prosecution and court forum is used.

257. The reviewing experts considered that Slovakia were in compliance with this provision of the Convention, while noting that no evidence had been provided of the actual prosecution of individuals under the statutory provision cited.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

258. Slovakia indicated that they had adopted and implemented measures as described in this article. Section 344, relating to obstruction of justice, was cited as the relevant implementing domestic provision.

Section 344. Obstruction of Justice

(1) Any person who, in proceedings before the court or in criminal proceedings,

- a) presents as genuine the evidence of which he knows that it is false or altered,
- b) falsifies, alters or obstructs the evidence or prevents the taking of evidence,
- c) obstructs or prevents the presence or the testimony of a party to the criminal proceedings, party to the proceedings before the court, witness, expert, interpreter or translator, or
- d) uses violence, threat of violence or threat of other grievous harm, or who promises, offers or provides undue advantage with the aim of exerting influence on a party to the criminal proceedings, party to the proceedings before the court, witness, expert, interpreter, translator, or a body involved in criminal proceedings, shall be liable to a term of imprisonment of one to six years.

(2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1

- a) with the intention of obtaining substantial benefit for himself or another, or causing substantial damage or other particularly serious consequence,
- b) with the intention to prevent or obstruct the exercise of fundamental rights and freedoms by another, or
- c) by reason of specific motivation.

259. Slovakia provided statistics as regards the number of individuals convicted of Obstruction of Justice in recent years. In 2010, 52 individuals were investigated for this offence with 36 prosecutions taken forward and all of these cases resulting in a conviction. In relation to 2011, similar figures were provided with 57 investigations carried out, 41 prosecutions taken forward and 31 successful convictions.

(b) Observations on the implementation of the article

260. The governmental experts noted the implementation of the provision by Slovakia. In particular, the reviewing experts noted that the statistical information provided regarding the investigation, prosecution and convictions achieved under section 344(1)(d) of the Criminal Code indicated a genuine effort and success in Slovakia's efforts to implement this provision of the Convention. Specific note was made of the high success-rate in prosecutions, with a 100% success rate in 2010 and a 76% conviction rate in 2011.

261. As regards the statutory scope of section 344 of the Criminal Code, the reviewing experts were satisfied that the key elements of Article 25(a) of the Convention were covered by this domestic provision. Section 344(1)(d) was noted in particular as meeting the requirements of this provision of the Convention.

262. The reviewing experts therefore considered Slovakia to be in full compliance with Article 25(a) of the Convention.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

263. Slovakia indicated that they had adopted and implemented measures as described in this article. Section 344 of the Criminal Code (see above), relating to obstruction of justice was cited as the relevant implementing domestic provision.

(b) Observations on the implementation of the article

264. The reviewing experts considered that Article 344 of the Criminal Code, and specifically sub-paragraph 344(1)(d), was sufficiently broad so as to criminalise the acts outlined in this provision of the Convention.

265. During the country visit, officials from the Special Prosecution Office confirmed that the physical intimidation of members of the police or prosecutors would be criminalised under this provision of the Criminal Code as such officials would be covered by the reference to a "body involved in criminal proceedings" in sub-paragraph 344(1)(d) of the Criminal Code.

266. As noted above, the reviewing experts noted in particular the significant success of the Slovakian authorities in prosecuting offenders under this domestic provision.

267. Consequently, the reviewing experts considered that Slovakia were in full compliance with this provision of the Convention.

Article 26 Liability of legal persons

Paragraph 1

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

268. Slovakia confirmed that it had established liability of legal persons for participation in the offences established in accordance with the Convention, making reference to section 83a and 83b of the Criminal Code.

Section 83 a. Confiscation of a sum of money

(1) Court may impose the confiscation of a specific sum of money on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence in connection with:

- a) exercising the right to represent that legal person
- b) exercising the right to make decisions in the name of that legal person
- c) exercising the right to carry out the control within that legal person, or
- d) negligence concerning the supervision or due diligence within that legal person.

(2) Protective measure pursuant to paragraph 1 shall not be imposed upon legal persons whose financial status as a debtor shall not be consolidated under a particular legal norm regulating bankruptcy proceedings, or if a property of the State or the European Union would be affected by the exercising of the protective measure, upon bodies of a foreign State and upon organizations of public international law. Nor shall it be imposed if the punishability of the criminal offence as described in paragraph 1 becomes extinct upon the expiry of the limitation period or as based on the (defense of) effective regret.

(3) Court may impose the confiscation of a sum of money described in paragraph 1 in amount of 800 Euro up to 1 660 000 Euro. When determining the amount of money to be confiscated the court shall consider seriousness of the committed criminal offence, scope of the offence, gained benefit, damage arisen, circumstances of the commission of the criminal offence and consequences for the legal person. Court shall not impose the confiscation of money if, at the same time, it imposes the protective measure of confiscation of a property on the legal person pursuant to Section 83 b.

(4) In the case of merger, fusion or division of the legal person the court shall impose the protective measure pursuant to paragraph 1 on the legal successor of the legal person which has been wound-up.

(5) The paid or enforced sum of money escheats to the state unless the court decides otherwise in accordance with international treaty which has been promulgated and is binding for the Slovak Republic.

Section 83 b. Confiscation of a property

(1) Court shall impose the confiscation of a property on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence as described in Section 58 paragraph 2 or 3 and if the legal person gained the property or its part by a crime or from proceeds of a crime, in connection with:

- a) exercising the right to represent that legal person
- b) exercising the right to make decisions in the name of that legal person
- c) exercising the right to carry out the control within that legal person, or
- d) negligence concerning the supervision or due diligence within that legal person

(2) Protective measure pursuant to paragraph 1 shall not be imposed upon legal persons whose financial status as a debtor shall not be consolidated under a particular legal norm regulating bankruptcy proceedings, or if a property of the State or the European Union would be affected by the exercising of the protective measure, upon bodies of a foreign State and upon organizations of public international law. Nor shall it be imposed if the punishability of the criminal offence as described in paragraph 1 becomes extinct upon the expiry of the limitation period or as based on the (defense of) effective regret.

(3) The protective measure pursuant to paragraph 1 shall not be imposed if with regard to the seriousness of the committed criminal offence, scope of the offence, gained benefit, damage arisen, circumstances of the commission of the criminal offence, consequences for the legal person and an important public interest, the

protection of the community can be ensured even without confiscation of the property of the legal person. If the court do not impose the confiscation of a property on the legal person, it shall impose the protective measure of confiscation of a specific sum of money pursuant to the section 83 a.

(4) Confiscation of a property affects the property of the legal person to the extent to which it belongs to the legal person upon completion of bankruptcy proceedings

a) proceeds of the encashment of the property

b) property excluded from the particulars to sale

c) property which is liable to bankruptcy proceedings if the encashment was not reached.

(5) In the case of merger, fusion or division of the legal person the court shall impose the protective measure pursuant to paragraph 1 on the legal successor of the legal person which has been wound-up.

(6) The State shall become the owner of the confiscated property unless the court decides otherwise in accordance with international treaty which has been promulgated and is binding for the Slovak Republic.

269. Slovakia noted that as the provisions cited above were relatively new, having entered into force on 1 September 2010, there were not currently any examples of the application of these pieces of legislation in specific cases. Slovakia also confirmed that, to date, no legal person has been investigated, prosecuted or sentenced for criminal offences.

(b) Observations on the implementation of the article

270. The governmental experts observed that legal bodies can be pursued in criminal cases in Slovakia when used to commit or to aid and abet the commission of a crime. Even an attempted crime in which a legal body was used may be pursued by investigators.

271. Under the Slovak legal system, only a natural person may be found to have breached the criminal law. This is evidenced in section 19 of the Criminal Code which states that only natural persons may be guilty of a criminal offence.

272. Section 83a and 83b of the Criminal Code, however, allow a Court to impose protective measures on a legal person (i.e. through the imposition of a fine or the confiscation of property) where an offence has been committed by a natural person in the course of representing the company, taking decisions in the name of the company or otherwise exercising control over the company. The reviewing experts noted that this in effect established an indirect form of criminal liability in relation to legal persons.

273. It was noted during the country visit that due to the relatively new nature of the above provisions of the Criminal Code, no examples or statistics could be provided regarding the imposition of sanctions on legal persons through these provisions.

274. It was further noted that legal persons are in some circumstances subject to administrative liability, such as in relation to breach of taxation or company law requirements (i.e. the submission of misleading accounts). No form of civil responsibility is applicable to legal persons in the context of corruption.

275. The reviewing experts noted that Slovakia had made significant efforts through reforms to the Criminal Code in order to enhance the liability of legal persons and noted that such efforts resulted in compliance with this provision of the Convention.

276. **Recommendation:** The reviewing experts noted that Slovakia should continue to look at ways of extending and strengthening the measures relevant to the liability of legal persons, including the effective use by prosecution authorities of the new provisions introduced in this recently under the Criminal Code

Article 26 Liability of legal persons

Paragraph 2

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

277. Slovakia confirmed that it had established a form of liability of legal persons for in relation to offences established in accordance with the Convention, making reference to section 83a and 83b of the Criminal Code (see above).

(b) Observations on the implementation of the article

278. As above, the governmental experts noted the efforts made by Slovakia to introduce liability for legal persons into the Criminal Code through sections 83a and 83b.

279. As regards other forms of liability, legal persons are in some circumstances subject to administrative liability, such as in relation to breach of taxation or company law requirements (i.e. the submission of misleading accounts). No form of civil responsibility is applicable to legal persons in the context of corruption.

280. The reviewing experts considered Slovakia to be in compliance with this provision of the Convention.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

281. Slovakia confirmed that it had established liability of legal persons in relation to the offences established in accordance with the Convention, making reference to section 83a and 83b of the Criminal Code (see above).

(b) Observations on the implementation of the article

282. The reviewing experts noted that the activation of the provisions referred to by the Slovak Republic regarding the liability of legal persons is dependent on the commission of an offence by a natural person it was self-evident that the imposition of such liability on the legal person would not act so as to remove the criminal liability of the natural person.

283. In light of this, the reviewing experts considered that the Slovak Republic were in compliance with this provision of the Convention.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

284. Slovakia confirmed that legal persons held liable for an offence in accordance with article 26 of the Convention are subject to sanctions by virtue of sections 83a and 83b of the Criminal Code.

285. As these sections of the Criminal Code had recently come into force on 1 September 2010, Slovakia was not able to provide any specific examples of cases in which such penalties had been imposed on legal persons.

(b) Observations on the implementation of the article

286. As noted above, the governmental experts consider that the application of sections 83a and 83b establish a form of indirect criminal liability where an offence has been committed through or on behalf of a legal entity.

287. The measures capable of being imposed on a legal person include the imposition of a financial protective measure and the confiscation of property. As regards the financial sanction, this may range from 800 Euro up to 1 660 000 Euro. When determining the amount of money to be confiscated the court must consider the seriousness of the crime that has been committed, the benefit gained, and the damage caused. A financial penalty and the confiscation of property may not be imposed simultaneously by the court.

288. The reviewing experts noted that while these laws had been recently introduced, efforts should now be made by prosecutors and courts to make use of these new statutory powers and impose protective measures or the confiscation of property where appropriate.

289. In light of the above considerations the reviewing experts consider Slovakia to be in compliance with this provision of the Convention.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

290. Slovakia confirmed that it had introduced measures establishing participation in an offence established in accordance with the Convention as a criminal offence. Slovakia referred to sections 19 – 21 of the Criminal Code as evidence of implementation of this article of the Convention.

291. Section 19 of the Criminal Code defines an offender as a person who has committed a criminal offence while acting on his own and provides that only a natural person may be considered as the offender in relation to a criminal offence.
292. Section 20 and 21 of the Criminal Code define the concepts of an accomplice to a criminal offence and an abettor to a criminal offence. In relation to both provisions, the criminal liability of the defined persons is the same as that of an offender (i.e. someone committing a criminal offence acting alone).
293. Information was not available as regards specific cases of implementation of this provision as the statistical data systems in Slovakia do not record the participation, aiding, abetting, facilitating of an offence separately from situations in which the criminal offence is committed fully by one individual.

Section 19. Offender

- (1) An offender of a criminal offence is the person who committed a criminal offence acting on his own.
(2) Only a natural person may be considered as the offender of a criminal offence.

Section 20. Accomplice

If a criminal offence was committed by two or more persons acting in conjunction (accomplices), each of them has the same criminal liability as the single person who would commit such a criminal offence.

Section 21. Abettor

- (1) An abettor to a completed or attempted criminal offence is any person who intentionally
- 1) masterminded or directed the commission of a criminal offence (organiser)
 - 2) instigated another person to commit a criminal offence (instigator),
 - 3) asked another person to commit a criminal offence (hirer),
 - 4) assisted another person in committing a criminal offence, in particular by procuring the means, removing the obstacles, providing an advice, strengthening the determination, making a promise of post crime assistance (aider).
- (2) Unless this Act provides otherwise, the criminal liability of an abettor shall be governed by the same provisions as the criminal liability of an offender.

(b) Observations on the implementation of the article

294. The governmental experts noted that sections 20 and 21 of the Criminal Code broadly meet the requirements of Article 27 of the Convention.
295. The experts did however note that it would be beneficial for the purposes of their analysis had statistical information been available regard the prosecution of individuals in accordance with these domestic provisions. Furthermore, for the purposes of ensuring full compliance with the Convention, the availability of such statistics would allow the Slovak Republic to assess the effectiveness of these domestic statutory provisions.
296. The reviewing experts considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

297. Slovakia confirmed that an attempt to commit a criminal offence was in itself a criminal offence under section 14 of the Criminal Code. This section also provides that an attempted criminal offence shall carry the same punishment as a completed criminal offence. However, this section also identifies exceptions where an individual has ceased the action that would have led to the committal of an offence and has removed the threat, or provided information to the authorities allowing removal of the threat.

Section 14. Attempted Criminal Offence

(1) An attempted criminal offence is an action directly leading to the completion of a criminal offence preformed by an offender with the intent to commit a criminal offence, which has not been completed.

(2) The attempted criminal offence shall carry the same punishment as the completed criminal offence.

(3) The punishability of the attempted criminal offence shall become extinguished if the offender willfully

a) stopped performing the action leading to the completion of a criminal offence, and removed the threat to an interest protected under this Act presented by the attempt, or

b) gave information about the attempted criminal offence at such time when it was still possible to remove the threat to an interest protected under this Act presented by the attempt. Such information shall be submitted to the authorities with competence for criminal proceedings or to the Police Force. Members of the armed forces may give such information to their superior officers. Persons serving their imprisonment sentences or remanded in custody may give such information also to the officers of the Corps of Prison and Court Guard of the Slovak Republic.

(4) The application of paragraph 3 does not, however, prejudice criminal liability of the offender for a different criminal offence he had already committed through such an action.

298. No specific data or case-law was presented by Slovakia demonstrating the application of this provision. This was explained by Slovakia as being the result of the fact that no statistical data is kept which distinguishes an attempted offence or a fully completed offence.

(b) Observations on the implementation of the article

299. The governmental experts considered that, from a statutory perspective, section 14 of the Criminal Code, represented full implementation of this provision of the Convention

300. However, as noted above, the reviewing experts consider that the collection of data regarding the number of cases successfully prosecuted on the basis of the above domestic provision would assist both the reviewing experts and the Slovak Republic in assessing to what extent such legislative compliance is also reflected in the practical application of these provisions.

301. The reviewing experts considered Slovakia to be in compliance with this provision of the Convention.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

302. Slovakia confirmed that it had implemented this section of the Convention, citing section 13 of the Criminal Code.

Section 13. Preparation for Committing a Felony

- (1) Preparation for committing a felony means willful organization of a criminal act, procurement or adaptation of means or instruments for its commission, associating, grouping, instigating, contracting, abetting or aiding in such crime, or other deliberate actions designed to create conditions for its commission, where a felony has been neither attempted nor completed.
- (2) Preparation for committing a felony shall carry the same punishment as the felony, for which it has been intended.
- (3) The punishability of the preparation for committing a felony shall become extinguished if the offender willfully
- a) stopped performing the action leading to the commission of a felony, and removed the threat to an interest protected under this Act presented by the preparation, or
 - b) gave information about the preparation for committing a felony at such time when it was still possible to remove the threat to an interest protected under this Act presented by the preparation. Such information shall be submitted to the authorities with competence for criminal proceedings or to the Police Force.
- Members of the armed forces may give such information to their superior officers. Persons serving their imprisonment sentences or remanded in custody may give such information also to the officers of the Corps of Prison and Court Guard of the Slovak Republic.
- (4) The application of paragraph 3 does not, however, prejudice the criminal liability of the offender for a different criminal offence he had already committed through such an action.

303. No specific data or case-law was presented by Slovakia demonstrating the application of this provision. This was explained by Slovakia as being the result of the fact that no statistical data is kept which distinguishes cases involving the preparation of an offence from a fully completed offence.

(b) Observations on the implementation of the article

304. As noted in relation to the previous sections of Article 27 of the Convention, the governmental experts considered that, from a statutory perspective, section 13 of the Criminal Code, represented full implementation of this provision of the Convention.
305. However, as noted above, the reviewing experts consider that the collection of data regarding the number of cases successfully prosecuted on the basis of the above domestic provision would assist both the reviewing experts and the Slovak Republic in assessing to what extent such legislative compliance is also reflected in the practical application of these provisions.
306. The reviewing experts considered Slovakia to be in compliance with this provision of the Convention.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

307. Slovakia confirmed that it had implemented this provision of the Convention, citing the provisions of the Criminal Code relating to the causation element of a criminal offence.

Section 15. Causation

An intentional criminal offence is that where the offender

- a) acting in a manner defined in this Act, had the intent to infringe or prejudice an interest protected under this Act, or
- b) was aware that his act was likely to cause such infringement or prejudice, and was prepared to accept that consequence, should it occur.

Section 16

A criminal offence committed by negligence is that where the offender

- a) knew that by acting in a manner defined in this Act he could infringe or prejudice an interest protected under this Act, but presumed without good reasons that no such infringement or prejudice would be caused, or
- b) did not know that his act could cause such infringement or prejudice although, considering the circumstances and his personal situation, he should and could have been aware of it.

Section 17

An act committed by a natural person shall carry criminal liability only in case of intentional causation, unless it is explicitly stated in this Act that causation by negligence is sufficient.

(b) Observations on the implementation of the article

308. The reviewing experts noted that the statutory provision with most relevance to Article 28 of the Convention was section 15 of the Criminal Code. Under this provision, in order for criminal liability to be established it is sufficient for the prosecution to show that the offender *'acted in such a manner as to infringe or prejudice an interest or was aware that his act was likely to infringe or prejudice an interest'*.

309. During the country visit, the governmental experts from the Slovak Republic confirmed that it had been well-established through case-law that Slovakia that objective factual circumstances may be used to infer the intention to commit an offence (case 1T 110/2007).

310. The governmental experts from the Slovak republic also referred to a specific legislative provision in money laundering legislation which explicitly provides that knowledge and intention may be deduced from objective factual circumstances.

Act No. 297/2008 Coll. on the Prevention of Legalisation of Proceeds of Criminal Activity and Terrorist Financing

Section 2. Legalization

(2) Knowledge, intention or purpose required in actions referred to in subsection 1 may result from objective factual circumstances, especially from the nature of an unusual transaction.

311. In light of the above provisions the reviewing experts consider the Slovak Republic to be in compliance with this provision of the Convention.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

312. Slovakia considered that its statute of limitations is sufficiently long to allow the Slovak law enforcement bodies to prosecute and sentence all known offenders in criminal offences. The cases where the statute of limitation period has elapsed are rare and Slovak authorities do not keep special records on such issues.

313. Section 87 and 88 of the Criminal Code were cited by Slovakia as the relevant sections of domestic legislation as regards implementation of this provision of the Convention.

Criminal Code

Section 87. Limitation of Criminal Proceedings

(1) Punishability of an act shall become statute-barred on the expiry of the limitation period, which is

a) thirty years in case of a felony, for which this Act allows life imprisonment, b) twenty years in case of a felony, for which the Special Part of this Act allows a maximum custodial penalty of at least ten years, c) ten years in case of other felonies,

d) five years in case of a minor offence, for which the Special Part of this Act allows a maximum custodial penalty of at least three years,

e) three years in case of other minor offences.

(2) The limitation period shall not include

a) the period, during which the offender could not be made to stand trial because of legal impediments,

b) the period, during which the offender stayed abroad with the intention to avoid criminal prosecution,

c) the probationary period, in case of a conditional stay of criminal prosecution,

d) the period, during which the bringing of indictment was temporarily postponed,

e) the period, during which the criminal prosecution was interrupted.

(3) Limitation of criminal prosecution shall be interrupted

a) by the 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

b) when the offender commits an intentional criminal offence in the course of the limitation period.

(4) A new period of limitation shall commence to run as from the date of interruption of the initial limitation period.

Section 88

The expiry of the limitation period shall not result in the extinction of punishability for criminal offences set out in Chapter XII of the Special Part of this Act, except for the criminal offence of supporting and promoting groups leading to the suppression of fundamental rights and freedoms pursuant to Sections 421 and 422, criminal offence of defamation of a nation, race and conviction pursuant to Section 423, and the criminal offence of incitement of national, racial or ethnic hatred pursuant to Section 424.

(b) Observations on the implementation of the article

314. The reviewing experts noted that the statute of limitations states that action cannot be taken after the passage of 5 years for those offences which carry a maximum sentence of 3 years imprisonment or less. The experts deemed that this allowed ample leeway to investigate and initiate criminal proceedings before a court of law.

315. During the country visit it was confirmed by the Slovak authorities that the limitation period will start from the date an offence is committed. However, a number of significant exceptions to this principle are provided for in section 87(2) of the Criminal Code.

316. Prosecutors from the Special Prosecution Office noted that it was very rare for a prosecution to fail on the basis of the expiration of the statutory limitation period but that this had occurred in a limited number of circumstances.
317. It was also noted by the reviewing experts that a flexible approach was taken where a series of offences have been committed by an individual. Where this is the case, and even where such offences are unrelated, the last offence will mark the start date of the statute of limitations, provided that the limitation period in relation to the initial offence has not lapsed.
318. As regards the specific limitation periods applicable in relation to mainstream corruption offences, it was established that the applicable limitation period for the majority of such offences would be 5 or 10 years, depending on the maximum custodial sentence applicable to each offence.
319. Governmental experts also held discussions with members of civil society regarding the statute of limitations in force in the Slovak Republic. A mixture of views were expressed in this regard, with some present indicating that in relation to some cases, the limitation period has prevented the bringing of a case.
320. In light of the above, the governmental experts note that Slovakia may wish to consider extending the limitation periods applicable in relation to corruption offences in order to allow for sufficient time for prosecution.

(c) Successes and good practices

321. The governmental experts noted that there were a range of possibilities for extending the statute of limitations (i.e. where there have been legal impediments) in the Slovak Republic, including for corruption-related offences.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

322. Slovakia considered that they were in compliance with this provision, citing section 34 of the Criminal Code which outlines the rationale behind the imposition of penalties and details general provisions relating to the imposition of penalties following the commission of a criminal offence. Section 34(4) states that it is for a court to determine the type and degree of penalty imposed following the commission of an offence and outlines a range of factors that may be taken into account when coming to a decision on the degree of penalty to be imposed.
323. Section 34(5) outlines specific sentencing provisions in relation to accomplices, organisers, instigators and abettors of an offence, focusing on the extent to which these types of offender were in fact involved in the commissioning of an offence.

Criminal Code

Section 34. Guidelines for Imposition of Penalties

- (1) A penalty serves the purpose of protecting the society from the perpetrator of crime by preventing him from continuing to commit crime, and creating conditions for his re-education with a view to making him lead a regular life and, at the same time, discouraging other persons from committing crime; moreover, a penalty expresses moral condemnation of the offender by the society.
- (2) An offender may be imposed only the type and degree of penalty that is provided for in this Act; a Special Part of this Act sets out the sentencing guidelines governing exclusively a custodial sentence.
- (3) A penalty is intended to punish only the offender, so as to minimize the impact on the offender's family and his close persons.
- (4) A court determines the type and the degree of penalty in particular on the basis of the mode of the commission of crime and its consequence, culpability, motive, aggravating circumstances, mitigating circumstances, the person of the offender, his personal situation and rehabilitation potential.
- (5) In determining the type and amount of punishment, the court shall consider
 - a) in the case of accomplices, also the extent, to which the actions performed by each of them have contributed to the commission of the criminal offence,
 - b) in the case of an organiser, a person who commissioned the criminal offence, an instigator, and an abettor, also the importance and character of their participation in the commission of the criminal offence,
 - c) with regard to the preparation for a felony and the attempted criminal offence, also the extent, to which the actions performed by the offender have brought the criminal offence nearer to its completion as well as the circumstances and reasons for its non-completion.
- (6) The penalties referred to in Section 32 may be imposed separately or concurrently. The court shall have to impose a custodial sentence for every criminal offence which, according to the Special Part of this Act, carries a maximum custodial penalty of at least five years.
- (7) The following penalties may not be imposed concurrently:
 - a) imprisonment and home arrest,
 - b) imprisonment and community service work,
 - c) pecuniary penalty and forfeiture of property,
 - d) forfeiture of a thing and forfeiture of property,
 - e) prohibition of residence and expulsion.
- (8) When the court delivers a life sentence, it may also decide not to grant the possibility of parole to the offender who
 - a) committed two or more particularly serious felonies,
 - b) met two or more parallel conditions warranting the application of a higher sentencing rate,
 - c) committed the criminal offence as a member of a criminal group or a terrorist group, or
 - d) was already punished for committing the criminal offence referred to in Section 47 paragraph 2.

(b) Observations on the implementation of the article

324. The reviewing experts noted the general legislative provisions referred to as representing a broad principle that the sanctions imposed by courts in relation to criminal offences must be proportionate to the offence committed.
325. As regards the specific penalties applicable to corruption-related offences it was noted by the reviewing experts that significant penalties apply where individuals are found guilty of such offences. Penalties generally range from the imposition of a substantial fine to imprisonment for a period of up to 10 years or longer where aggravating factors are applicable.
326. As regards, the practical enforcement of anti-corruption legislation, officials from the Special Prosecution Office noted that there were 200 prosecutions for corruption in the last year, and 74 cases which were concluded through the use of a plea-bargain. Further details regarding the enforcement of sanctions can be found in relation to Article 36 of the Convention.

327. In light of this legislative and enforcement framework, the reviewing experts considered Slovakia to be in full compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

328. Slovakia stated that it had adopted and implemented the measures described above, citing section 9 of the Criminal Procedure Code. This section outlines the circumstances in which a prosecution may not proceed such as where the individual potentially subject to the prosecution benefits from immunity, is a minor or is deceased.

Criminal Procedure Code

Section 9. Inadmissibility of Criminal Prosecution

(1) Criminal prosecution may not be instituted or, if already initiated, may not continue and shall be stayed

- a) if criminal prosecution is not allowed because of the statute of limitation,
- b) if the prosecution is conducted against a person enjoying exemption from the jurisdiction of the bodies involved in criminal proceedings and the court, or against a person who may be lawfully prosecuted only on the basis of an authorization, and the competent body has not issued such authorization,
- c) if conducted against a minor person who may not be held criminally liable,
- d) if conducted against a deceased person or a person declared dead,
- e) if conducted against a person whose previous prosecution for the same offence resulted in a final and conclusive court sentence, or it was lawfully stayed or conditionally discontinued and the accused proved himself, or conciliation has been reached and the criminal prosecution was discontinued unless such decision was declared null and void in a prescribed manner,
- f) if the criminal prosecution requires the consent of the injured party and such consent has not been granted or has been withdrawn, or
- g) if so stipulated by a promulgated international treaty.

(2) Where any of the grounds referred to in paragraph 1 only relates to a partial attack, which is a part of continuing criminal offence, the criminal prosecution in respect of remaining part of such criminal offence shall not be impeded.

(3) Criminal prosecution stayed on the grounds set out in subparagraph a) of paragraph 1 shall, however, be resumed if, within three days of the receipt of the resolution on the discontinuance of criminal prosecution, the accused insists on the hearing of the case. The accused shall have to be duly advised of this right.

(4) Criminal prosecution stayed on the grounds set out in subparagraph b) of paragraph 1 shall, however, be resumed after the termination of the mandate of the Member of the National Council of the Slovak Republic, the office of a judge of the Constitutional Court and the office of the Prosecutor General under conditions referred to in Section 215 paragraph 8.

(b) Observations on the implementation of the article

329. The governmental experts noted that section 9(1)(b) of the Code of Criminal Procedure provides that a criminal prosecution may not be instituted or, if already initiated, may not continue and shall be stayed “if the prosecution is conducted against a person enjoying exemption from the jurisdiction of the bodies involved in criminal proceedings and the court, or against a person who may be lawfully prosecuted only on the basis of an authorization”.

330. During the country visit, Slovakia noted that section 8 of the Code of Criminal Procedure provides greater detail as to the range of individuals who benefit from such immunity.

Criminal Procedure Code

Section 8. Exemption from the Competence of the Bodies Involved in Criminal Proceedings

(1) Any person granted privileges and immunities under national or international law shall be exempt from the competence of the bodies involved in criminal proceedings and the court.

(2) For the criminal prosecution to be conducted against the Member of Parliament of the National Council of the Slovak Republic, the prior consent granted by the National Council of the Slovak Republic shall be required. For the criminal prosecution to be conducted against a judge, a judge of the Constitutional Court and the Prosecutor General of the Slovak Republic (hereinafter referred to as the "Prosecutor General"), the prior consent granted by the Constitutional Court shall be required.

(3) If in doubt whether an exemption from the competence of the bodies involved in criminal proceedings and the court applies to any other person, the body involved in criminal proceedings or the court shall have to request the Ministry of Justice of the Slovak Republic (hereinafter referred to as the "Ministry of Justice") to give its opinion on the matter. When it comes to foreign nationals, the Ministry of Justice shall consult the Ministry of Foreign Affairs of the Slovak Republic prior to providing its opinion.

331. In accordance with this section, those traditionally benefiting from exemption under international law such as diplomats will be exempt from the competence of law enforcement bodies. Furthermore, for prosecution of Members of Parliament to be taken forward, the prior consent of the National Council of the Slovak Republic is required. Similarly, in order for criminal prosecution to be conducted against a judge, the Constitutional Court must give permission.

332. During the country visit, the reviewing experts were informed that to date there had been cases in which judges from the regular court system had been prosecuted. To the knowledge of the governmental experts of Slovakia where authorisation was requested for prosecution of such individuals the appropriate authorisation has been issued by the appropriate body.

333. In light of the above discussions, the reviewing experts consider that Slovakia is in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

334. Slovakia cited section 2 of the Code of Criminal Procedure. This section outlines the fundamental rules governing criminal procedure in the Slovak Republic

Criminal Procedure Code

Section 2. Fundamental Rules of Criminal Procedure

- (1) No person may be prosecuted as accused on other than the legal grounds and in other manner than that provided for under the present Act.
- (2) 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.
- (3) Unless this Act provides otherwise, any interference with fundamental rights and freedoms under this Act before the commencement of the criminal prosecution or in pre-trial proceedings shall be decided by a judge for pre-trial proceedings; the judge for pre-trial proceedings shall also decide on other matters as provided for by this Act.
- (4) Any person subject to criminal prosecution shall be presumed innocent until proven guilty by a final sentencing judgment.
- (5) A prosecutor represents the State in criminal proceedings. Unless this Act, an international treaty promulgated in a manner prescribed by law (hereinafter referred to as "international treaty") or the decision of an international organization which is binding on the Slovak Republic provides otherwise, the prosecutor shall have the duty to prosecute all criminal offences that came to his knowledge.
- (6) Unless this Act provides otherwise, the bodies involved in criminal proceedings and the courts shall act ex officio. They shall have the duty to deal with the cases involving detention as a matter of priority and without undue delay. The bodies involved in criminal proceedings or the courts shall not take account of the petitions whose content infringes on the fulfillment of this duty.
- (7) Every person shall have the right to a fair hearing of his criminal case by an independent and impartial tribunal in reasonable time and in his presence, and to have an opportunity to comment on any adduced evidence, unless this Act provides otherwise.
- (8) No person may be prosecuted in respect of an act for which he had already been finally convicted or from which he had been acquitted. This principle shall not exclude the use of extraordinary remedies as prescribed by law.
- (9) Every person subject to criminal prosecution shall have the right to defence.
- (10) 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.
- (11) The court may also take other evidence than those proposed by the parties.
The parties shall have the right to supply the evidence proposed by them.
- (12) The 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.
- (13) All the bodies involved in criminal proceedings shall co-operate with associations of citizens and shall make use of the educational impact thereof.
- (14) All parties shall have equal status before the court.
- (15) Criminal prosecution before the court shall only be initiated on the basis of a motion or an indictment filed by a prosecutor who shall represent the prosecution or the motion in the proceedings before the court.
- (16) 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.
- (17) 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 under the present Act. The judgment shall always be announced in open court.
- (18) Proceedings before the court shall be oral; exceptions are provided for under this Act. The examination of evidence shall be carried out by the court which, however, leaves the examination of the accused, witnesses and expert witnesses to the parties, starting with the one that proposed or procured the evidence.
- (19) When deciding at the main trial, open or closed court hearing, the court may only take account of the evidence taken during the hearing, unless otherwise provided by law.
- (20) If the accused, his legal guardian, the injured party, a participating person or witness declares that he does not speak the language of the proceedings, he shall have the right to be assigned an interpreter or a translator.

(b) Observations on the implementation of the article

335. The governmental experts noted section 2 of the Criminal Code of Procedure which outlines the basic rules governing the exercise of prosecution powers in Slovakia. In particular, subsection 2(5) of the Code provides that “the prosecutor shall have the duty to prosecute all criminal offences that came to his knowledge”. Thus a legal obligation is placed on the prosecutor to exercise his powers where knowledge of an offence arises.

336. During the country visit, members of the Special Prosecutors Office confirmed to the reviewing experts that where they are made aware of a corruption offence, irrespective of the type of offence, its gravity or the amount of damage caused, they are obliged to take forward the prosecution and that this principle is implemented in practice.

337. In light of the application of the above principle the reviewing experts considered that Slovakia was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

338. Slovakia cited section 81 of the Code of Criminal Procedure. This section lays down specific conditions in which the bail reverts to the treasury.

§ 81

Financial Guaranty

(1) If the reason for detention under Section 71 para 1 letter a) or c) is given, the court and in pre-trial proceedings judge for pre-trial proceedings can decide about maintaining the freedom of the accused or of his being released even if the accused has lodged a financial guaranty and the court or judge for pre-trial proceedings receives the financial guaranty. If the defendant is prosecuted for serious crime, is given the reason for arrest under Section 71 para 2 letter a) to c) or e), or the accused was taken into arrest pursuant to paragraph 4 or in accordance with Section 80 paragraph 3, the financial guaranty can receive only if it is justified by exceptional circumstances of the case. The accused is always imposed the obligation to notify a police officer, prosecutor or court a change of residence. With the consent of the accused may a financial guarantee lodge the other person, but prior to its receipt the person must be familiar with the substance of the accusation and the facts, in which the reason of the arrest is. Accused and the person, who lodged the financial guaranty, must be prior noticed with the reasons, for which the financial guaranty can devolve to the State.

(2) Taking into account the person and financial circumstances of the accused or the person who offers the financial guaranty for the accused, the composition of the financial security offered, the nature of the crime, its effect and other circumstances of the case the presiding judge or in pre-trial proceedings judge for pre-trial proceedings

a) in the frame of the procedure under Section 72 para 2 or Section 302 para 2 determines by measure the amount of financial guaranty and the method of its lodging and services the measure to the person who has a financial guarantee to lodge, or

b) proceeds in accordance with Section 72 para 2 or Section 302 para 2 issue without issuing of this measure.

(3) The court and in pre-trial proceedings on the proposal of the prosecutor judge for pre-trial proceedings decides that the financial guaranty devolves to the State if the accused

- a) escapes, hides or does not notice change of residence and makes impossible service of summons or other document of policeman, prosecutor or court,
- b) affects to witnesses, experts, co-accused or otherwise obstructs the elucidation of circumstances relevant for criminal prosecution,
- c) culpably fails to summons on the act of criminal proceedings, which execution of which is without the presence of the accused excluded
- d) continuing in criminal activity or attempts to accomplish the crime, which the accused prior did not finished or which the accused prepared, or by which the accused threatened,
- e) has not fulfilled obligations or fails to comply restrictions imposed by a court and in pre-trial proceedings judge for pre-trial proceedings, or
- f) avoids enforcement of the imposed sentence of imprisonment or financial penalty, or enforcement of the replacement imprisonment for a financial penalty.

(4) If an accused was left released or released under paragraph 1 and occurs some of the circumstances under paragraph 3, the court may, if the reason for arrest under Section 71 is given, to take the accused into arrest and for that reason presiding judge also issues an arrest warrant, in pre-trial proceedings proceeds policeman and prosecutor under Section 86 and 87 para 1 and judge for pre-trial proceedings under Section 87 para 2, or it is proceeded in accordance with Section 73. If the accused was taken into arrest after the previous release from arrest for freedom, for further duration of arrest periods applies Section 78.

(5) Financial guaranty is canceled on the proposal of the prosecutor or the accused or the person who lodged the financial guaranty, or also without proposal the court and in pre-trial proceedings judge for pre-trial proceedings, who decided about receipt of financial guaranty, if reasons lapsed or have changed which led to its receipt. If the accused was convicted to imprisonment or a financial penalty, sentence of compulsory labor, the court can decide that the financial guarantee lasts until the day the accused enters a term of imprisonment or pays a financial penalty or enforces sentence of compulsory labor, or reimburse the costs of criminal proceedings. The accused, who was convicted to financial penalty, can request that financial guarantee lodged by the accused, uses for paying the financial penalty or satisfaction for entitlement to damages.

(6) Against the decision under paragraph 3 is admissible the complaint, which has suspensive effect.

(b) Observations on the implementation of the article

339. The reviewing experts noted from discussions with representatives of the Special Prosecution Office that at the preparative stage of proceedings, if a reasons for taking an individual into custody listed in the Criminal Code can be established by the prosecuting authority (i.e. likelihood to flee) bail can be withheld by the Court.

340. In light of the fact that specified grounds for withholding bail are clearly identified in the Code of Criminal Procedure, the reviewing experts consider Slovakia to be in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

341. Slovakia stated that it is in compliance with this provision of the Convention, citing section 34, paragraph 4 of the Criminal Code and section 415 of the Code of Criminal Procedure.

Section 34

Guidelines for Imposition of Penalties

4) A court determines the type and the degree of penalty in particular on the basis of the mode of the commission of crime and its consequence, culpability, motive, aggravating circumstances, mitigating circumstances, the person of the offender, his personal situation and rehabilitation potential.

Conditional Discharge

Section 66

(1) The court may conditionally discharge the convict who, through the fulfilment of his obligations and good conduct when serving his term of imprisonment, has demonstrated that he has been reformed, and can be expected to comply with the specified standards of conduct in the future, and

- a) who was sentenced for a minor offence, and has served one half of an unconditional imprisonment sentence, or his sentence was reduced upon the decision of the President of the Slovak Republic,
- b) who was sentenced for a felony, and has served two thirds of an unconditional imprisonment sentence, or his sentence was reduced upon the decision of the President of the Slovak Republic.

(2) When deciding about conditional discharge, the court shall take into consideration both the previous life of the convict and the correctional and re-educational category, to which the sentenced person had been assigned.

Section 67

(1) The person sentenced for a particularly serious felony may be conditionally discharged after he has served three quarters of the sentence imposed on him.

(2) The person sentenced to life imprisonment sentence may be conditionally discharged after he has served at least 25 years of such sentence.

(3) The person repeatedly sentenced to life imprisonment sentence may not be conditionally discharged.

(b) Observations on the implementation of the article

342. Section 34(4) details the types of factors to be taken into account by the Court when assessing the degree of penalty that should be imposed in relation to an offence. However, these provisions do not directly address the issue of early release or parole of a person that has already been convicted. Section 415 of the Criminal Procedure Code relates to the transfer of sentenced persons in the context of international cooperation and as such is not relevant.

343. The reviewing experts however noted section 66 and 67 of the Criminal Procedure Code which provides for the conditional discharge of individuals convicted of a criminal offence. Under these provisions, the court may conditionally discharge a convict on the grounds of conduct and where an individual has demonstrated that he has been reformed during his time in prison.

344. The reviewing experts also noted that in the case of a felony this discretion is only available to the court where at least two thirds of the original sentence has already been completed by the convict. This is increased to three-quarters of the original sentence in the case of a particularly serious felony. Furthermore, the court must take into account the previous life of the convict and the re-educational and correctional category of the offender before deciding to allow conditional discharge.

345. In light of the above provisions, the reviewing experts indicated that they considered Slovakia to be in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

346. Slovakia considered that it was in compliance with this provision of the Convention, citing section 61 of the Criminal Code.

Criminal Code

Section 61. Prohibition to Undertake Certain Activities

(1) The prohibition to undertake certain activities shall mean that, during the execution of this sentence, the sentenced person is not allowed to perform a certain job, profession, or hold a specific office, or perform an activity, which is subject to special authorisation, or whose performance is governed under a separate regulation.

(2) The court may impose the prohibition to undertake certain activities of not less than one year and not more than ten years if the offender has committed a criminal offence in connection with such activities.

(3) The execution of the sentence of the prohibition to undertake certain activities does not include the time spent serving an unconditional imprisonment sentence. The length of execution of the sentence of the prohibition to undertake certain activities does, however, include the time before the judgment became final, during which the offender had been, pursuant to separate regulations, withdrawn a licence to perform the activity subject to the prohibition, and the time, during which he had no longer been allowed to perform such activities by decision of a State authority.

(4) The portion of the sentence of the prohibition to undertake certain activities that had already been served shall be deducted from a new sentence of the prohibition to undertake certain activities imposed upon the offender for the same offence, or from this sentence if it is imposed as an accumulative or concurrent sentence.

347. Slovakia also highlighted a number of texts specific to specific areas of the public sector including the Civil Service, the Judiciary and Prosecutors:

Sections 19 and 52 par. 1 (a), (b), (c) and (d) of the Act no. 400/2009 Coll. on Civil Service.

Section 6 par. 2 (d) and Section 15 par. 2 (c) of the Act no. 153/2001 Coll. on Prosecutors and Prosecutors Assistants.

Section 5 par. 1 (d) and Section 18 par. 1 (a), (b) and (c) of the Act no. 385/2000 Coll. on Judges and Lay Judges.

Adoption / Amendment of legislation – Within parliament, once the document is submitted for review, do not usually the views of judiciary prevail, parliamentarians will go along with their opinions.

Section 11 par. 1 (c) and Section 14 par. 2 (d) of the Act no 323/1992 Coll. on Notaries and the Notarial Activity (Notarial Order)

Section 10 par. 1 (c) and Section 16 par. 2 (d) of the Act no. 233/1995 Coll. on Executors and Executorial Activity (Executorial Order)

348. Slovakia explained that a number of these provisions introduce a prohibition for legal professions to be convicted for an intentional criminal offence. Any person cannot be appointed a judge, prosecutor, executor, notary or advocate, if they have been convicted of an intentional criminal offence. Where an individual is appointed to such a position, that role will be terminated upon conviction for an intentional criminal offence.

(b) Observations on the implementation of the article

349. The reviewing experts noted that the pieces of legislation cited above in relation to specific areas of the public sector including the civil service, judiciary and prosecutors, provided for the suspension of members of those groups where an individual has been accused of a criminal offence.

350. During the country visit, members of the Ministry of Justice highlighted that where prosecution proceedings have started in relation to a public official, that person would in normal circumstances be temporarily suspended from their function before pending the resolution of the case. The decision as to whether an individual is suspended in this way will be left to the superior body in the area of the public sector in which they work. In accordance with section 61 of the Criminal Code, any conviction for corruption means a legal disqualification from carrying out specific public functions including that of a prosecutor, civil servant, and member of the bar association.

351. In relation to members of the judiciary, a Minister has the discretion to suspend a judge from his position when he is accused of a crime. Once a three-year period passes the judge may then automatically return to his position, even if the proceedings continue. Were suspension to be continued after three years, damages would be payable to the relevant member of the judiciary.

352. During the country visit, members of the Special Penal Court indicated that one judge subject to prosecution had been in this process for 10 years and had returned to his position after 6 years and was presently prosecuting criminal cases while continuing to be subject to prosecution.

353. The reviewing experts note that there is currently a debate in Slovakia regarding whether Minister should have the discretion to suspend members of the judiciary in this manner. As regards prosecutors the decision on any suspension is made by the Prosecutor-General.

354. The reviewing experts noted the fragmented way in which standards in this area have been applied and observed that the Slovak Republic may wish to consider adopting common rules for civil servants in this matter and, if it considered appropriate, the establishment of an independent central body for the implementation of those rules.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the

disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

355. Slovakia referred to section 61 of the Criminal Code and the other domestic provisions outlined in relation to the previous provision.

(b) Observations on the implementation of the article

356. The governmental experts deemed section 61 of the Criminal Code to be applicable to the provision under review.

357. In accordance with the analysis outlined above, the reviewing experts considered Slovakia to be in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

358. Slovakia referred to section 61 of the Criminal Code.

(b) Observations on the implementation of the article

359. The governmental experts deemed section 61 of the Criminal Code to be applicable to the provision under review. During the country visit, it was confirmed that section 61 applied to individuals working for enterprises owned in whole or in part by the State.

360. Consequently, the reviewing experts considered that Slovakia were in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

361. Slovakia referred to section 61 of the Criminal Code.

(b) Observations on the implementation of the article

362. The reviewing experts noted that the competent authority referred to in Article 30, paragraph 8, is different for civil servants depending on the department in which they work as there is presently no central body responsible for disciplinary issues in relation to civil servants.

363. This fragmented approach is reflected in the fact no Code of Ethics is presently in place for all civil servants. As noted above, the reviewing experts observed that the Slovak Republic may wish to continue and expedite efforts to establish a common code of conduct for civil servants and the establishment of a central independent body to ensure a coherent application of those standards.

Article 30 Prosecution, adjudication and sanctions

Paragraphs 9 and 10

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

364. Slovakia cited section 3(3) of the Act No. 475/2005 Coll. on Execution of Imprisonment Penalty. Slovakia provided a summary of this provision, explaining that it provided that the opinions and skills that can help the convicted person to reintegrate into society and to respect the legal order shall be supported during imprisonment.

(b) Observations on the implementation of the article

365. Slovakia's national authorities confirmed to the reviewing experts on the country visit that there are specific programmes applicable for the reintegration of people into society following a period of imprisonment, pursuant to the legislation cited above. In relation to individuals convicted of minor offences, a probation officer is allocated to monitor and assist such persons in their rehabilitation.

366. In light of the above legislative provisions and evidence of practical application the reviewing experts consider that Slovakia are in compliance with this provision of the Convention.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

367. Slovakia considered that it was in compliance with this provision of the Convention, citing sections 60 and 83 of the Criminal Code.

Section 60. Forfeiture of a Thing

(1) The court shall order the forfeiture of a thing, which was

- a) used to commit a criminal offence,
- b) intended to be used to commit a criminal offence,
- c) obtained by means of a criminal offence, or as remuneration for committing a criminal offence, or
- d) obtained by the offender in exchange for a thing referred to in c).

(2) If the thing referred to in paragraph 1 is inaccessible or unidentifiable, or is merged with the property of the offender, or with the property of another person obtained by lawful means, the court may impose the forfeiture of a thing whose value corresponds to the value of the thing referred to in paragraph 1.

(3) An inaccessible thing shall mean a thing that has been destroyed, damaged, lost, stolen, rendered unusable, consumed, hidden, transferred to another person for the purpose of excluding it from the competence of criminal procedure authorities, or a thing removed in a different manner, or the costs saved.

(4) A thing within the meaning of paragraph 1 shall also mean the proceeds of crime, as well as profits, interests, or other benefits arising from such proceeds or things.

(5) The court may impose the sentence of forfeiture of a thing only if the thing belongs to the offender.

(6) The forfeited thing shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State.

(7) The provisions of paragraph 1 shall not apply if

- a) the victim is entitled to a compensation for damage caused by the offence, which the forfeiture of a thing would make impossible,
- b) the value of the thing is prima facie disproportionate to the gravity of the minor offence, or
- c) the court waives the punishment of the offender.

Section 83. Confiscation of a Thing

(1) In case that the sanction of the forfeiture of a thing referred to in Section 60 par. 1 was not imposed, the court shall order the confiscation of such a thing if

- a) it belongs to the person who cannot be prosecuted or sentenced,
- b) it belongs to the offender whose punishment the court waived, or the offender whose prosecution was stayed, or the offender whose prosecution was conditionally stayed, or the offender whose prosecution was stayed due to the conclusion of a conciliation agreement,
- (c) it consists of goods that are not marked with control stamps or goods that were not subjected to other technical control measures required by generally binding legal acts for taxation purposes,
- (d) the circumstances of the case justify the presumption that the thing could be used as a source to finance terrorism, or
- (e) this is necessary with regard to the security of people or property or other similar general interest.

(2) The confiscated thing shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State.

(3) The provision of paragraph 1 shall not apply if:

- a) the injured party is entitled to the compensation for damage caused by the offence, which the confiscation of the thing would render impossible, or
 - b) the value of the thing is manifestly disproportionate to the gravity of the minor offence.
- (4) translation of provision (which was adopted in July 2011) will be able in foreseeable time.

Section 83 a. Confiscation of a sum of money

(1) Court may impose the confiscation of a specific sum of money on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence in connection with:

- a) exercising the right to represent that legal person

- b) exercising the right to make decisions in the name of that legal person
 - c) exercising the right to carry out the control within that legal person, or
 - d) negligence concerning the supervision or due diligence within that legal person.
- (2) Protective measure pursuant to paragraph 1 shall not be imposed upon legal persons whose financial status as a debtor shall not be consolidated under a particular legal norm regulating bankruptcy proceedings, or if a property of the State or the European Union would be affected by the exercising of the protective measure, upon bodies of a foreign State and upon organizations of public international law. Nor shall it be imposed if the punishability of the criminal offence as described in paragraph 1 becomes extinct upon the expiry of the limitation period or as based on the (defense of) effective regret.
- (3) Court may impose the confiscation of a sum of money described in paragraph 1 in amount of 800 Euro up to 1 660 000 Euro. When determining the amount of money to be confiscated the court shall consider seriousness of the committed criminal offence, scope of the offence, gained benefit, damage arisen, circumstances of the commission of the criminal offence and consequences for the legal person. Court shall not impose the confiscation of money if, at the same time, it imposes the protective measure of confiscation of a property on the legal person pursuant to Section 83 b.
- (4) In the case of merger, fusion or division of the legal person the court shall impose the protective measure pursuant to paragraph 1 on the legal successor of the legal person which has been wound-up.
- (5) The paid or enforced sum of money escheats to the state unless the court decides otherwise in accordance with international treaty which has been promulgated and is binding for the Slovak Republic.

(b) Observations on the implementation of the article

368. The experts noted that Slovakian law allows prosecutors to pursue the proceeds of crime, pursuant to sections 60 and 83 of the Criminal Code.
369. Sections 60(1) (c) enables the Court to order the forfeiture of anything obtained by means of a criminal offence, or as remuneration for committing a criminal offence. Section 60(1)(d) of the Criminal Code then provides that anything obtained by an individual in exchange for the proceeds of crime may also be seized. In cases where the proceeds have already been disposed of or can no longer be reached, the Court may order the forfeiture of something else with a similar value.
370. Forfeiture is at the discretion of the Court that is hearing the case and may not be applied in cases where a victim is entitled to compensation which might be made impossible due to forfeiture of property. Forfeiture is also precluded in cases where the value of the asset in the possession of the offender is grossly disproportionate to the offence committed.
371. Confiscation is also allowed where there has been no conviction. Section 83 of the Criminal Code provides that an object can be confiscated in cases where the offender cannot be prosecuted or sentenced, if it belongs to an offender who has had his case stayed in any way or has had his punishment stayed, if it consists of goods that are not properly marked or if it constitutes a risk to the general public. Goods can also be confiscated if the circumstances of the case allow the presumption that the goods may be used to finance terrorism.
372. While the reviewing experts considered that the Criminal Code provided for the requisite legislative provisions so as to implement this provision of the Convention, no specific examples or statistics were given by the Slovak Republic so as to demonstrate the practical application of these provisions.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

373. Slovakia highlighted sections 58 – 60 and section 83 of the Criminal Code.

Forfeiture of Property

Section 58

(1) Taking account of the circumstances, under which the criminal offence was committed and the personal situation of the offender, the court may order the forfeiture of property of the offender whom it sentences to life imprisonment or to unconditional imprisonment for a particularly serious felony, through which the offender gained or tried to gain large-scale property benefits or caused large-scale damage.

(2) The court shall order the forfeiture of property even in the absence of the conditions referred to in paragraph 1 when sentencing perpetrators of criminal offences of illicit manufacturing and possession of narcotics or psychotropic substances, poisons or precursors, and trafficking in them pursuant to Section 172 paragraphs 2, 3 or 4, or Section 173, criminal offence of trafficking in human beings pursuant to Section 179, criminal offence of trafficking in children pursuant to Section 180 paragraphs 2 or 3 or Section 181, criminal offence of extortion pursuant to Section 189 paragraph 2 (c), criminal offence of gross coercion pursuant to Section 190 paragraphs 1, 3, 4 or 5, or Section 191 paragraphs 3 or 4, criminal offence of coercion pursuant to Section 192 paragraphs 3 or 4, criminal offence of sharing pursuant to Section 231 paragraphs 2, 3 or 4, or Section 232 paragraphs 3 or 4, criminal offence of legalisation of proceeds of crime pursuant to Section 233 or 234, criminal offence of forgery, fraudulent alteration and illicit manufacturing of money and securities pursuant to Section 270, criminal offence of uttering counterfeit, fraudulently altered and illicitly manufactured money and securities pursuant to Section 271 paragraph 1, criminal offence of manufacturing and possession of instruments for counterfeiting and forgery pursuant to Section 272 paragraph 2, criminal offence of failure to pay tax and insurance pursuant to Section 277, criminal offence of failure to pay tax pursuant to Section 278 paragraphs 2 or 3, criminal offence of breach of regulations governing state technical measures for labelling goods pursuant to Section 279 paragraphs 2 or 3, criminal offence of establishing, masterminding and supporting a criminal group pursuant to Section 296, establishing, masterminding and supporting a terrorist group pursuant to Section 297, criminal offence of terror pursuant to Section 313 or Section 314, criminal offence of accepting a bribe pursuant to Section 328 paragraph 2 or 3, or Section 329 paragraphs 2 or 3, criminal offence of bribery pursuant to Section 334 paragraph 2 or Section 335 paragraph 2, criminal offence of countefeiting and altering a public instrument, official seal, official seal-off, official emblem and official mark pursuant to Section 352 paragraph 6, criminal offence of smuggling of migrants pursuant to Section 355 or Section 356, criminal offence of procuring and soliciting prostitution pursuant to Section 367 paragraph 3, criminal offence of manufacturing of child pornography pursuant to Section 368, criminal offence of dissemination of child pornography pursuant to Section 369, criminal offence of corrupting morals pursuant to Section 372 paragraphs 2 or 3, or criminal offence of terrorism and some forms of participation on terrorism pursuant to Section 419, if the offender has acquired his property or part thereof from the proceeds of crime at least in the substantial extent.

Section 59

(1) The penalty of the forfeiture of property shall recover in the extent that belongs to the sentenced person in the execution of the penalty of the forfeiture of property after the end of bankruptcy proceedings,

- a) proceeds of encashment of property,
- b) the property that is excluded from the particulars of sale,
- c) the property subject to the bankruptcy proceedings if the encashment of property was not reached.

(2) The forfeited property shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State.

(3) The final decision on the forfeiture of property shall result in the dissolution of community property of spouses.

Section 60. Forfeiture of a Thing

- (1) The court shall order the forfeiture of a thing, which was
- a) used to commit a criminal offence,
 - b) intended to be used to commit a criminal offence,
 - c) obtained by means of a criminal offence, or as remuneration for committing a criminal offence, or
 - d) obtained by the offender in exchange for a thing referred to in c).
- (2) If the thing referred to in paragraph 1 is inaccessible or unidentifiable, or is merged with the property of the offender, or with the property of another person obtained by lawful means, the court may impose the forfeiture of a thing whose value corresponds to the value of the thing referred to in paragraph 1.
- (3) An inaccessible thing shall mean a thing that has been destroyed, damaged, lost, stolen, rendered unusable, consumed, hidden, transferred to another person for the purpose of excluding it from the competence of criminal procedure authorities, or a thing removed in a different manner, or the costs saved.
- (4) A thing within the meaning of paragraph 1 shall also mean the proceeds of crime, as well as profits, interests, or other benefits arising from such proceeds or things.
- (5) The court may impose the sentence of forfeiture of a thing only if the thing belongs to the offender.
- (6) The forfeited thing shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State.
- (7) The provisions of paragraph 1 shall not apply if
- a) the victim is entitled to a compensation for damage caused by the offence, which the forfeiture of a thing would make impossible,
 - b) the value of the thing is prima facie disproportionate to the gravity of the minor offence, or
 - c) the court waives the punishment of the offender.

(b) Observations on the implementation of the article

374. The governmental experts deemed the provision under review to be legislatively provided for in section 58 (1) and 60(1)(a) and (b) of the Criminal Code. In particular, the reviewing experts note that Section 58 (2) of the Criminal Code provide for the forfeiture of property used to obtain large-scale property benefits or cause significant damage in the context of the commission of the criminal offences of passive bribery pursuant to Section 328 paragraph 2 or 3, or Section 329 paragraphs 2 or 3 of the Criminal Code or active bribery pursuant to Section 334 paragraph 2 or Section 335 paragraph 2 of the Criminal Code.

375. No examples or relevant statistics were provided by the Slovak Republic in order to demonstrate the practical implementation of these provisions.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

376. Slovakia confirmed that it had implemented this provision of the Convention, citing section 3, 4 and 95 of the Code of Criminal Procedure and Act No. 297/2008 Coll. on Prevention of Legalisation of Proceeds of Criminal Activity and Terrorist Financing (AML Law).

Code of Criminal Procedure

Section 3. Assistance provided by State authorities, legal entities and natural persons

(1) State authorities, upper-tier territorial units, municipalities and other legal entities and natural persons shall have the duty to provide assistance to criminal procedure authorities and the courts to help them carry out their tasks in criminal proceedings. The State shall reimburse other legal entities and natural persons for their demonstrable substantive costs. The motions filed to this effect shall be heard and decided pursuant to the provisions of Section 553 paragraphs 4 and 5; they may be filed only by persons who incurred such substantive costs.

(2) State authorities, upper-tier territorial units, municipalities and other legal entities shall have the duty to notify criminal procedure authorities without delay of any fact indicating that a criminal offence has been committed and to expediently act on the requests from criminal procedure authorities.

(3) Criminal procedure authorities and the courts shall have the duty of mutual assistance in the fulfillment of their tasks under this Act. The service of documents and information between criminal procedure authorities and the courts may be effected by electronic means.

(4) The provisions of paragraphs 1 and 2 shall be without prejudice to the duty to maintain the confidentiality of classified data, business secrecy, bank secrecy, tax secrecy, postal secrecy and the secrecy of telecommunications.

(5) Prior to the commencement of the criminal prosecution or in pre-trial proceedings, the prosecutors, police officers with prior consent of a prosecutor, and the presiding judges of panels in the proceedings before the court shall have the right to request the data protected by business secrecy, bank secrecy or tax secrecy, or the data from the register of registered securities.

Section 4. Cooperation with special interest community groups and with trustworthy persons

(1) With a view to ensuring educational influence of criminal proceedings, and averting and preventing crime, criminal procedure authorities and the court may cooperate with special interest community groups where they consider it suitable and appropriate.

(2) For the purposes of this Act, special interest community groups shall mean mainly citizens' associations, trade union bodies, collectives of fellow workers and churches and religious societies recognized by law; special interest community groups shall not include political parties or movements.

(3) A trustworthy person shall mean a person who is capable of exerting a positive influence on the conduct of the accused. The trustworthiness of that person shall be determined by the court or, in pre-trial proceedings, by a prosecutor.

(4) Special interest community groups may offer a pledge to rehabilitate the accused if it can be reasonably expected that the accused may be rehabilitated under their influence; the pledge motion shall have to specify the manner of exerting influence on the accused. The court that receives such motion may consider the issue at the main trial in the presence of the representatives of the special interest community group; if it decides to accept the pledge, it shall take this fact into account in the decision on the punishment. It may, especially where the Criminal Code permits it, impose a conditionally suspended sentence, a non-custodial penalty, or waive the punishment altogether.

(5) Special interest community groups shall have the right to appoint their representatives who, subject to court decision, shall represent them at the hearings before district or regional courts at which they will present positions of their special interest community groups concerning the criminal case in question, the person of the offender and his rehabilitation prospects.

Section 83

Confiscation of a Thing

(1) In case that the sanction of the forfeiture of a thing referred to in Section 60 par. 1 was not imposed, the court shall order the confiscation of such a thing if

a) it belongs to the person who cannot be prosecuted or sentenced,
b) it belongs to the offender whose punishment the court waived, or the offender whose prosecution was stayed, or the offender whose prosecution was conditionally stayed, or the offender whose prosecution was stayed due to the conclusion of a conciliation agreement,

(c) it consists of goods that are not marked with control stamps or goods that were not subjected to other technical control measures required by generally binding legal acts for taxation purposes,

(d) the circumstances of the case justify the presumption that the thing could be used as a source to finance terrorism, or

(e) this is necessary with regard to the security of people or property or other similar general interest.

(2) The confiscated thing shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State.

(3) The provision of paragraph 1 shall not apply if:
the injured party is entitled to the compensation for damage caused by the offence, which the
confiscation of the thing would render impossible, or
the value of the thing is manifestly disproportionate to the gravity of the minor offence.

Section 83 a

Confiscation of a sum of money

Court may impose the confiscation of a specific sum of money on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence in connection with:

exercising the right to represent that legal person
exercising the right to make decisions in the name of that legal person
exercising the right to carry out the control within that legal person, or
negligence concerning the supervision or due diligence within that legal person

Protective measure pursuant to paragraph 1 shall not be imposed upon legal persons whose financial status as a debtor shall not be consolidated under a particular legal norm regulating bankruptcy proceedings, or if a property of the State or the European Union would be affected by the exercising of the protective measure, upon bodies of a foreign State and upon organizations of public international law. Nor shall it be imposed if the punishability of the criminal offence as described in paragraph 1 becomes extinct upon the expiry of the limitation period or as based on the (defense of) effective regret.

Court may impose the confiscation of a sum of money described in paragraph 1 in amount of 800 Euro up to 1 660 000 Euro. When determining the amount of money to be confiscated the court shall consider seriousness of the committed criminal offence, scope of the offence, gained benefit, damage arisen, circumstances of the commission of the criminal offence and consequences for the legal person. Court shall not impose the confiscation of money if, at the same time, it imposes the protective measure of confiscation of a property on the legal person pursuant to Section 83 b.

In the case of merger, fusion or division of the legal person the court shall impose the protective measure pursuant to paragraph 1 on the legal successor of the legal person which has been wound-up.

The paid or enforced sum of money escheats to the state unless the court decides otherwise in accordance with international treaty which has been promulgated and is binding for the Slovak Republic.

Section 83 b

Confiscation of a property

Court shall impose the confiscation of a property on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence as described in Section 58 paragraph 2 and if the legal person gained the property or its part by a crime or from proceeds of a crime, in connection with:

exercising the right to represent that legal person
exercising the right to make decisions in the name of that legal person
exercising the right to carry out the control within that legal person, or
negligence concerning the supervision or due diligence within that legal person

Protective measure pursuant to paragraph 1 shall not be imposed upon legal persons whose financial status as a debtor shall not be consolidated under a particular legal norm regulating bankruptcy proceedings, or if a property of the State or the European Union would be affected by the exercising of the protective measure, upon bodies of a foreign State and upon organizations of public international law. Nor shall it be imposed if the punishability of the criminal offence as described in paragraph 1 becomes extinct upon the expiry of the limitation period or as based on the (defense of) effective regret.

The protective measure pursuant to paragraph 1 shall not be imposed if with regard to the seriousness of the committed criminal offence, scope of the offence, gained benefit, damage arisen, circumstances of the commission of the criminal offence, consequences for the legal person and an important public interest, the protection of the community can be ensured even without confiscation of the property of

the legal person. If the court do not impose the confiscation of a property on the legal person, it shall impose the protective measure of confiscation of a specific sum of money pursuant to the section 83 a.

Confiscation of a property affects the property of the legal person to the extent to which it belongs to the legal person upon completion of bankruptcy proceedings

proceeds of the encashment of the property
property excluded from the particulars to sale
property which is liable to bankruptcy proceedings if the encashment was not reached.

In the case of merger, fusion or division of the legal person the court shall impose the protective measure pursuant to paragraph 1 on the legal successor of the legal person which has been wound-up.

The State shall become the owner of the confiscated property unless the court decides otherwise in accordance with international treaty which has been promulgated and is binding for the Slovak Republic.

Section 95. Seizure of financial assets

(1) If facts indicate that financial assets on an account in a bank or branch of a foreign bank or other financial assets are dedicated to committing a criminal offence, they were used to commit a criminal offence or they are proceeds of a crime, president of a panel of judges and a prosecutor in the preliminary stage may order to seize the financial assets. The order to seize under the first sentence may concern also financial assets additionally accrued at the account, including ancillary rights, if the reason of the seizure refers also to them.

(2) If the case disallows a delay, prosecutor may order according to the paragraph 1 even before the beginning of criminal proceedings. Such order shall be confirmed by a judge for the preliminary proceedings in 48 hours at the latest otherwise it becomes invalid.

(3) The order shall be issued in written and shall be reasoned. In the order the sum in the relevant currency which the order refers to, shall be included as far as it can be enumerated in the time of the decision. In the order any disposition with the seized financial assets up to the indicated sum shall be prohibited unless the president of the panel of judges and the prosecutor in the preliminary proceedings decide otherwise.

(4) Seizure shall not include the financial assets which are necessary to satisfy requisite needs of life of the accused person or a person, of which the upbringing or subsistence the accused or the person of which the financial assets were seized, is obliged to take care.

(5) If the seizure of the financial assets is not necessary any more for the purposes of the criminal proceedings, it shall be set aside. If it is not necessary in the stipulated amount, the seizure shall be reduced. The president of the panel of judges and the prosecutor in the preliminary proceedings shall decide by an order about the setting aside or reduction of the seizure.

(6) The order according to the paragraph 1 or 2 shall be always delivered to the bank, branch of a foreign bank or another legal person or natural person who disposes of the financial assets, and after the realization of the order even to the person whose financial assets were seized.

(7) The seized financial assets may be disposed of only upon previous accord of the president of the panel of judges and prosecutor in preliminary proceedings. While the seizure is running, all legal acts and claims for the seized financial assets are ineffective.

(8) The person, whose financial assets were seized, is allowed to ask for setting aside or reduction of the seizure. The president of the panel of judges and prosecutor in the preliminary proceedings shall decide on such application without delay. Against such decision a complaint may be lodged. If the complaint was dismissed, the person whose financial assets were seized is allowed to lodge it again without giving new reasons after the lapse of 30 days since the decision on the previous complaint entered into force; otherwise it shall not be dealt with.

(9) If it is necessary to seize the financial assets in the criminal proceedings to assure the claim for damages of the victim, paragraphs 1 to 8 shall be applied mutatis mutandis.

(b) Observations on the implementation of the article

377. The governmental experts recognised that the provision under review was legislatively provided for in part by section 95 of the Criminal Procedure Code.

378. This provision of the Criminal Code provides that during the preliminary stages of an investigation, financial assets that are believed to come from crime may be seized following an order by the president of a panel of judges on receipt of an application. There is no specific limitation on the period of time for such an order; an order stands until any further decision such as the making of a confiscation order by the courts or a decision of the court to cancel the freezing order.
379. In urgent cases, a prosecutor has the power to issue a freezing order, however this has to be reviewed by a judge within 48 hours.
380. Under section 16 of the Anti-Money Laundering Act 297 / 2008, financial institutions are also required to postpone unusual transactions where they have been reported to the Financial Intelligence Unit, where the processing of the transaction could impede the seizure of the proceeds of criminal activity or where the FIU otherwise requests the postponement of a specified transaction.
381. During the country visit, the FIU noted that the freezing of assets as outlined above was a relatively common practice and that the powers under the Anti-Money Laundering Act and other legislation were being used.
382. The reviewing experts also noted sections 83, 83a and 83b of the Code of Criminal Procedure as being relevant to the provision under review.
383. The reviewing experts considered Slovakia to be in compliance with this provision of the Convention.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

384. Slovakia stated that they have not implemented the provision under review.

(b) Observations on the implementation of the article

385. During the country visit, officials noted that seized items are usually administered by those bodies that have taken the act of confiscation or seizure. There is not a centralised authority established for the purposes of administering frozen, seized or confiscated property. Section 94 of the Code of Criminal Procedure provides that if the asset received requires particular conditions for storage then the item may be forwarded to other law enforcement authorities. It was indicated during the country visit that this provision was implemented in practice Section 94 Code of Criminal Procedure.
386. **Recommendation:** The governmental experts noted that the Slovak authorities may wish to consider the establishment of a centralised body for the administration of frozen, seized or confiscated property.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

387. Slovakia cited sections 58-60, 83, 83a and 83b of the Criminal Code.

Criminal Code

Section 83 b. Confiscation of a property

(1) Court shall impose the confiscation of a property on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence as described in Section 58 paragraph 2 and if the legal person gained the property or its part by a crime or from proceeds of a crime, in connection with:

- a) exercising the right to represent that legal person
- b) exercising the right to make decisions in the name of that legal person
- c) exercising the right to carry out the control within that legal person, or
- d) negligence concerning the supervision or due diligence within that legal person.

(2) Protective measure pursuant to paragraph 1 shall not be imposed upon legal persons whose financial status as a debtor shall not be consolidated under a particular legal norm regulating bankruptcy proceedings, or if a property of the State or the European Union would be affected by the exercising of the protective measure, upon bodies of a foreign State and upon organizations of public international law. Nor shall it be imposed if the punishability of the criminal offence as described in paragraph 1 becomes extinct upon the expiry of the limitation period or as based on the (defense of) effective regret.

(3) The protective measure pursuant to paragraph 1 shall not be imposed if with regard to the seriousness of the committed criminal offence, scope of the offence, gained benefit, damage arisen, circumstances of the commission of the criminal offence, consequences for the legal person and an important public interest, the protection of the community can be ensured even without confiscation of the property of the legal person. If the court do not impose the confiscation of a property on the legal person, it shall impose the protective measure of confiscation of a specific sum of money pursuant to the section 83 a.

(4) Confiscation of a property affects the property of the legal person to the extent to which it belongs to the legal person upon completion of bankruptcy proceedings

- a) proceeds of the encashment of the property
- b) property excluded from the particulars to sale
- c) property which is liable to bankruptcy proceedings if the encashment was not reached.

(5) In the case of merger, fusion or division of the legal person the court shall impose the protective measure pursuant to paragraph 1 on the legal successor of the legal person which has been wound-up.

(6) The State shall become the owner of the confiscated property unless the court decides otherwise in accordance with international treaty which has been promulgated and is binding for the Slovak Republic.

(b) Observations on the implementation of the article

388. The governmental experts deemed the provision under review to have been legislatively provided for in part under in section 60, paragraph (1) (d) of the Criminal Code. This provision provides that where the proceeds of crime have been exchanged for some other thing, that property or object may be forfeited in place of those proceeds. Furthermore, section 60, paragraph (2) provides that if the proceeds of crime are inaccessible or unidentifiable, or are merged with the property of the offender, or with the property of another person obtained by lawful means, the court may impose the forfeiture of a thing whose value corresponds to the value of those proceeds.

389. Thus section 60 allows for the confiscation of either the property for which the proceeds of crime have been exchanged or, where the proceeds of crime have been merged or changed in a way that makes it unidentifiable, allows for the confiscation of property of an equivalent financial value.

390. Furthermore, Section 2 (3) of the Act 297 of 1998, on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing and on Amendments and Supplements to Certain Acts criminalises the intentional conversion of the nature of property where an individual knows that the property originates from criminal activity or involvement in criminal activity, with the aim of concealing or disguising the illicit origin of the property or with the aim of assisting a person involved in the commission of such criminal activity to avoid the legal consequences of his conduct.

391. The reviewing experts considered that the domestic provisions referred to above broadly covered the requirements of this provision of the Convention. However, the Slovak Republic may wish to consider amending its current legislation so as to ensure that where the proceeds of crime are transformed or converted then the resulting property may be frozen, seized or confiscated as required under the Convention.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

392. The Slovak Republic cited section 60(2) of the Criminal Code. Slovakia also noted that while the seizure of property, pursuant section 83 of the Criminal Code was not currently possible, the Slovakian Parliament had approved an amendment to the Criminal Code on 13 July 2011 to resolve this issue. The amendment will enter into force on 1 September 2012.

(b) Observations on the implementation of the article

393. The governmental experts deemed the provision under review to have been legislatively provided for in section 60, paragraph (2) of the Criminal Code. This provision provides that where the proceeds of crime are merged with the property of the offender, or with the property of another person obtained by lawful means, the court may impose the forfeiture of a thing whose value corresponds to the value of those proceeds.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

394. The Slovak Republic cited sections 60(4), and 83 – 83b of the Criminal Code.

(b) Observations on the implementation of the article

395. The governmental experts deemed the provision under review to be legislatively provided for in section 60(4) of the Criminal Code.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

396. Slovakia confirmed that they have implemented this provision.

(b) Observations on the implementation of the article

397. The governmental experts deemed the provision under review to be legislatively provided for in two key ways. Firstly, law enforcement officials have the ability to request information from financial institutions where they require such information in order to progress an investigation. The specific legislation referred to can be found in the Section 91(4)(g) of the Act on Banks and section 29(a)(iv) of the Act on Police Force 171/1993.

398. The governmental experts noted that these were general provisions which provided the opportunity to request information from banks that may hold relevant information and that these powers may also be used in the case of requests for international cooperation.

399. Furthermore, the reviewing experts noted that banks and financial institutions are required to proactively provide information under Act 297/1998. Under section 21 of this legislation the reporting entity is also obliged to provide further information where requested.

400. The reviewing experts considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

401. Slovakia confirmed that it had adopted and implemented the measures described in paragraph 8 of Article 31, citing Act No.101/2010 Coll. On Proving of Origin of Property.

Act No.101/2010 Coll. On Proving of Origin of Property

Section 8

- (1) Prosecutor shall submit proposal on initiation of proceedings to voice acquisition of property from illegal income (hereinafter referred to as "proposal") to the court, if:
- b) a person identified in suggestion shall not explain under Section 7 (2) or his explanation shall not be considered sufficient by prosecutor.

(b) Observations on the implementation of the article

402. The governmental experts deemed the provision under review to be legislatively provided in section 8(1)(b) of the Act No.101/2010 Coll. On Proving of Origin of Property

Article 31 Freezing, seizure and confiscation

Paragraphs 9 and 10

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

(a) Summary of information relevant to reviewing the implementation of the article

403. Slovakia confirmed that it was in compliance with this provision, citing section 45 of the Code of Criminal Procedure.

Section 45

- (1) Participating person is a person whose thing, sum of money or property may be or has been confiscated upon the motion.
- (2) Participating person has the right:
- a) to express his/her views on all matters and evidence referred to in the motion to impose a protective measure, after the submitting of the motion,
- b) to be present on the main hearing and in open court, to make proposals, submit evidence and have an access to the files,
- c) to lodge remedies in the cases provided for by this Act, in the case of the seizure of the property to the extent pursuant to the section 416b even before the submitting of the motion to impose a protective measure.
- (3) Bodies involved in criminal proceedings and the court are obliged to advise the participating person on his/her rights and to give him/her an opportunity to enjoy them, including the advice on delivery and consequences relating to it.
- (4) If the participating person is suspended from his/her legal capacity or his/her legal capacity is restricted, his/her legal representative shall exercise the rights pursuant to this Act.
- (5) In pre-trial proceedings the judge for pre-trial proceedings on the motion of the prosecutor and in the court proceedings the president of the panel shall appoint an authorized representative to the participating person from the list of attorneys, if necessary for the protection of his/her interests. If the reason of appointment abandons the judge for pre-trial proceedings on the motion of the prosecutor and in the court proceedings the president of the panel shall vacate the representative by an arrangement.

(6) In the first act with him/her, the participating person is obliged to notice an address for delivering of document including personal delivery, as well as the mode of delivery, therewith if s/he changes the address or the mode of delivery, s/he is obliged to notice the fact immediately to the competent body; the body involved in the criminal proceedings or the court advise.

404. This provision generally regulates the procedural rights of the party. These rights are concretized and amended by the other provisions of the Criminal Procedure Code and they are following: right to express oneself to the merits (this right is exercised on the hearing at the court); right to be present at the court hearing, make proposals and provide evidence; the bill of indictment has to be delivered to the participating person (Section 240 par. 1 (c) CPC), s/he has to be informed on the date of the court hearing (Section 247 par. 2 CPC), s/he may question witnesses and examined persons (Section 272 par. 1 CPC); the participating person has the right to consult legal documents serving as an evidence (Section 269 CPC), s/he has to be submitted real evidence (Section 270 par. 1 CPC), as a party to the proceedings s/he has the right to propose amendment of evidence (Section 272 par. 2 CPC), s/he has the right to a closing statement at the court hearing (Section 274 par. 2 CPC); the participating person has the right to consult case files, make notes and copies of the files or their parts on his/her own costs (Section 69 par. 1 CPC); s/he has the right to lodge an appeal or other remedies; the judgment has to be delivered to the participating person (Section 173 par. 1 CPC); s/he has the right to impugn the verdict of the judgment concerning the seized thing (Section 307 par. 1 (d) CPC), the decision of the court has to be declared in the presence of the participating person or has to be delivered to him/her (Section 179 par. 1 CPC); the participating person has the right to lodge a complaint against the decision on seizure of the thing, such complaint has a suspensive effect (Section 299 par. 3 CPC); s/he has the right to propose a repeal of the final decision of a prosecutor or a policeman violating a law (Section 364 par. 1 (d) CPC); the participating person has the right to be represented by a plenipotentiary (Section 53 par. 1 CPC); s/he has the right to appoint a lawyer to an accused person if the lawyer was not appointed by the accused himself or by his/her legal representative (Section 39 par. 2 CPC); the participating person is not obliged to pay costs of criminal proceedings incurred to the State (Section 555 CPC) and vice versa the State does not pay the costs incurred to the participating person or his/her expenses relating to the appointment of the plenipotentiary (Section 553 par. 1 CPC); the principle *beneficium cohaesionis* shall be applied also to the participating person (Sections 324 and 401 CPC).

405. The protection provided is procedural rather than being a guarantee of substantive rights. Substantive rights (ownership or bona fide possession) are protected by sections 50 and 794 of the Civil Code.

(b) Observations on the implementation of the article

406. The reviewing experts noted that the Slovak Republic had legislatively implemented the provision under review in part through section 60(5) of the Criminal Code. This states that “the Court may impose the sentence of forfeiture of a thing only if the thing belongs to the offender”.

407. Furthermore, procedural protections are provided to bona fide 3rd parties through section 45 of the Code of Criminal Procedure including the right to express his or her

views during the court hearing on confiscation. A number of other provisions of the Criminal Procedure Code were also cited in this regard.

408. During the country visit, officials from the Slovakian authorities noted that the final decision on confiscation will always reside with the courts and that in coming to a decision on the matter, the rights of 3rd parties will be taken into consideration. The burden of proof will be on the law enforcement officials to prove the grounds for confiscation.

409. Finally, the Civil Code provides for the protection of the substantive rights of 3rd parties.

410. The reviewing experts found the Slovak Republic to be in compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

411. The Slovak Republic considered that it was in compliance with this provision of the Convention, citing sections 127 – 140 of the Code of Criminal Procedure and Act No. 256/1998 Coll. on Witness Protection.

412. The provisions with most specific relevance to Article 32, paragraph 1 are highlighted below.

Code of Criminal Procedure

Section 134

(1) A witness who cannot appear for examination because of his age, illness, bodily, sensory or mental handicap or because of other serious reasons, may be examined using technical devices for the transmission of sound or images.

(2) The provision of paragraph 1 shall apply, as appropriate, to the witnesses residing abroad who cannot or do not want to appear for examination but are ready to testify, and where the competent authority of the foreign State provides necessary legal assistance.

(3) The provision of paragraph 1 shall apply, as appropriate, also to the examination of endangered witnesses or protected witnesses who are granted assistance under separate legislation. The same procedure shall apply to the witnesses who are to be examined in a different case.

Section 136

(1) If there is a reason to believe that a witness or his close person may be endangered by the disclosure of his place of residence, the witness may be allowed to give the address of his workplace or other address for the service of summons.

(2) 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 identity, place of residence, and/or the place of stay, the witness may be allowed to withhold his personal data. However, at the main trial, the witness shall have to give an explanation as to the source of the facts he testified about. The documents on the identity of such witnesses

shall be kept at the prosecution office and, in the proceedings before the court, by the presiding judge. They shall be inserted in the file only after the aforesaid danger has passed. Where necessary, even these witnesses may be asked questions concerning the facts related to their credibility and questions concerning their relationships to the accused or to the victim.

(3) 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 the physical appearance and voice of the witness, or conducting examination with the help of technical equipment, including audio and video transmission technology.

(4) The authorisation for the use of the procedure referred to in paragraphs 1 and 2 shall be given by the presiding judge of a panel or, in pre-trial proceedings, by a prosecutor.

(5) The provisions of Section 117 paragraph 3 may be exceptionally applied, as appropriate, to the examination of witnesses for the purpose of disclosing felonies, corruption, criminal offences of the abuse of power by a public official, or criminal offences of laundering the proceeds of crime.

Section 137

If a police officer does not recognise the reason for applying the procedure referred to in Section 136 paragraph 1 or 2, although the witness demands it and supplies specific facts substantiating its use, the police officer shall refer the case to a prosecutor who will examine his actions. If there is no danger of delay, he shall defer the examination of the witness until the prosecutor decides on the matter. Otherwise he shall examine the witness and shall, until the prosecutor's decision, handle the protocol on witness examination in a manner enabling to keep the witness's identity secret.

Section 138

The provisions of Sections 123 to 126 on the examination of the accused shall apply, as appropriate, also to the examination of witnesses, confrontation of witnesses who have already been heard, and identification.

Section 139

(1) If a criminal procedure authority or the court establish that a witness may be endangered by the fact that the accused or the sentenced person is at liberty, it shall inform the witness that

- a) the accused was released or escaped from remand custody,
- b) the sentenced person was released or escaped from prison.

(2) A witness may ask a prosecutor already at the stage of pre-trial proceedings or the court in the proceedings before the court to be informed of the facts referred to in paragraph 1. In case of persons serving a prison sentence, such request shall be filed with the court that heard the case in the first instance.

(3) Witnesses may waive their rights referred to in paragraphs 1 and 2 by making an explicit statement to this effect in writing or orally on the record.

(b) Observations on the implementation of the article

413. The reviewing experts noted that Section 134 and 136 of the Criminal Procedure Code provide protection to a witness who may be endangered due to his or her provision of evidence.

414. Section 134 provides that technological tools such as audio or video tools may be used during the examination of endangered witnesses or protected witnesses who have been granted assistance under separate legislation. Section 136, subparagraph 2, provides a broad protection to a witness who may be endangered by the disclosure of his identity, place of residence by allowing for such information to be withheld in these circumstances. In order to protect the witness during criminal proceedings, his appearance and voice may be altered to hide his true identity

415. Authorisation for the use of these types of protection procedures is given by the judge where a trial has already commenced. Where a trial has not yet begun such protection may be granted by the relevant prosecutor without the need to request the authorisation of a judge.

416. Such protections are also extended to the witness where ‘a close person’ to the witness may become endangered due to the provision of evidence by the witness. The reviewing experts considered that this reference to ‘a close person’ was sufficient to satisfy the requirements of Article 32, paragraph 1 which requires protection to be provided to family members of the witness and “other persons close to them”.
417. Furthermore, and as noted above, penal sanctions will be applied to individuals who seek to intimidate witnesses or interfere in their giving of evidence in any way. Any person who interferes in the giving of testimony or production of evidence is guilty of a crime, pursuant to section 344 of the Criminal Code.
418. Where an individual has requested protection as permitted by Section 136 of the Criminal Code, an appeal procedure is outlined in section 137 whereby the witness may have his request reviewed by a prosecutor.
419. During the country visit, prosecutors and investigators noted that it was rare that such protection was deemed necessary for witnesses. The provision of such protection also created procedural difficulties as regards the verification of evidence. Previous cases of protection have involved changes in identity and location of individuals.
420. For the reasons provided for above, the governmental experts were of the opinion that the Slovak Republic had fully implemented the provision under review.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

421. Slovakia stated that it had adopted and implemented the measures described in subparagraph 2(a) and cited Act No. 256/1998 Coll. on Witness Protection (attached to the self-assessment questionnaire) and section 136 and 137 of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

422. As noted above, sections 136 and 137 allow for both the relocation of individuals and the non-disclosure of the identity or whereabouts of witnesses. During the country visit, the reviewing experts were informed that physical protection of persons can also be provided for.
423. The reviewing experts considered Slovakia to be in full compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

424. The Slovak Republic considered that it was in compliance with this provision of the Convention, citing sections 132 – 140 of the Criminal Code.

(b) Observations on the implementation of the article

425. The reviewing experts deemed section 136(3) of the Criminal Procedure Code to have legislatively implemented the provision under review.

(3) 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 the physical appearance and voice of the witness, or conducting examination with the help of technical equipment, including audio and video transmission technology.

426. The reviewing experts therefore considered Slovakia to be in full compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

427. The Slovak Republic considered that it was in compliance with the provision under review.

(b) Observations on the implementation of the article

428. During the country visit, the national authorities confirmed that around 10 agreements are in place with other States (i.e. Czech Republic, Canada) for the relocation of persons.

429. The reviewing experts therefore consider Slovakia to be in full compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

430. The Slovak Republic provided that it was in compliance with the provision under review.

(b) Observations on the implementation of the article

431. During the country visit members of the prosecution services of Slovakia confirmed that the protection afforded to witnesses under sections 134 and 136 of the Criminal Code would also be extended to victims to the extent that they are witnesses.

432. In light of this, the reviewing experts consider Slovakia to be in compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

433. The Slovak Republic considered that it was in compliance with this provision of the Convention, citing sections 46 – 54 of the Code of Criminal Procedure which regulate the protection, rights and obligations of victims in criminal procedure.

(b) Observations on the implementation of the article

434. During the country visit, the national authorities confirmed that the views and concerns of victims can be presented and considered at all stages of the criminal proceedings.

435. The reviewing experts therefore considered Slovakia to be in compliance with this provision of the Convention.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

436. The Slovak Republic cited section 13 of the Labour Code. This provision provides for the prohibition of discrimination with regard to employees and sub-paragraph 13(3) states that “In the workplace, nobody may be persecuted or otherwise sanctioned in the

performance of labour-law relations for submitting a complaint, charge or proposal for the beginning of criminal prosecution against another employee or the employer”. In the event that an employee believes that his or her rights under section 13 have been infringed the employee will have recourse to a Court and to a claim for legal protection.

Labour Code

Section 13. Prohibition of discrimination

(1) Employer shall be obliged to treat with employees in labour - law relations in accordance with principle of equal treatment stipulated for the area of labour - law relations by separate Act on Equal Treatment in Certain Areas and on the Protection against Discrimination and on Amending and Supplementing Certain Acts (Antidiscrimination Act).

(2) In accordance with principle of equal treatment, the discrimination shall be prohibited also from reasons of marital status, family status, sexual orientation, colour of skin, language, age, unfavourable health state or health disability, genetic nature, religion, political or other conviction, trade union activity, national or social origin, belonging to certain nationality or ethnic group, property, lineage or other status.

(3) The enforcement of rights and obligations arising from labour – law relations must be in compliance with good morals. Nobody may abuse such rights and obligations to the damage of another participant to a labour – law relation, or of co-employees. In the workplace, nobody may be persecuted or otherwise sanctioned in the performance of labour - law relations for submitting a complaint, charge or proposal for the beginning of criminal prosecution against another employee or the employer.

(4) An employee shall have the right to submit a complaint to the employer in connection with the infringement of rights and obligations stated in paragraphs (1) and (2); the employer shall be obliged to respond to such a complaint without undue delay, perform retrieval, abstain from such conduct and eliminate the consequences thereof.

(5) An employee, who assumes that his/her rights or interests protected by law were aggrieved by failure to comply with the principle of equal treatment or by failure to comply with the conditions according to paragraph 3, may have recourse to a court and claim of legal protection stipulated by separate Act on Equal Treatment in Certain Areas and on the Protection against Discrimination and on Amending and Supplementing Certain Acts (Antidiscrimination Act).

437. Slovakia also noted that the Ministry of Interior has prepared a draft Whistleblower Protection Bill which is anticipated to be enacted on 1 January 2013. The draft bill is presently going through the normal legislative process.

(b) Observations on the implementation of the article

438. The reviewing experts noted section 13(3) of the Labour Code which prohibits discrimination against an employee on the grounds of their making a complaint against their employer. This paragraph specifically provides that; ‘In the workplace, nobody may be persecuted or otherwise sanctioned in the performance of labour-law relations for submitting a complaint, charge or proposal for the beginning of criminal prosecution against another employee or the employer’. Further to this prohibition, the Labour Code also provides, at section 13(5), that anyone who feels they have been discriminated against having lodged a report may have recourse to a Court to have their rights protected.

439. The experts noted the limited applicability of this Code in that it was only applicable to, and therefore only provided protection for, those working in the private sector. As regards the protection of reporting persons in the public sector, the governmental experts from Slovakia noted that the draft Whistleblower Protection Bill will provide the requisite protection in this sector.

440. The experts welcomed the efforts of the Slovak Republic to introduce whistleblower protection legislation. As regards the content of such legislation, the reviewing experts

noted that the Slovak Republic may wish to consider including in such legislation measures that provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning UNCAC-related offences, so as to ensure full compliance with Article 33 of the Convention.

441. The governmental experts also noted that as part of the development and eventual formal legislative process for the draft whistleblower protection legislation, the Slovak Republic may wish to seek and incorporate the views of a wide range of relevant stakeholders in relation to its substantive scope and effect so as to ensure that the legislation meets the needs of those it seeks to protect.
442. Noting the non-mandatory nature of this provision and the current efforts to introduce new whistleblower protection legislation by Slovakia, the reviewing experts considered that this provision of the Convention has been partly implemented.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

443. The Slovak Republic stated that it had taken measures to address the consequences of acts of corruption in its domestic legislation, citing Section 39 and 442 par. 2 of the Civil Code, section 481 par. 1 of the Commercial Code and section 26 of the Act no. 25/2006 Coll.
444. Under the Criminal Code, monetary damages may be paid where damage is admitted during proceedings. Section 46(3) Criminal Code of Procedure was cited in this regard.

Civil Code

Section 39

A legal act whose content or purpose are at variance with an act, circumvent the act or are at variance with good manners shall be invalid.

Section 442

(2) To damage caused by a crime of corruption is compensated with money also an intangible damage inflicted.

Commercial Code

Section 481

(1) Unless the contract implies otherwise, the right to use the business name shall be transferred together with the enterprise under the contract of sale, as long as this is not at variance with the law or a third person's right. Such a transfer shall not be prevented by the change in the legal type (form) of the person entitled to entrepreneurial activities.

Act on Public Procurement

Section 26. Personal Status

(1) Only a person may take part in the public award of contracts who meets the conditions of participation concerning his personal status:

- a) neither he nor his statutory body or a member of the statutory body has been lawfully convicted for the offence of corruption, for the offence of damaging the financial interests of the European Communities, for the offence of laundering of the proceeds of crime or for the offence of establishing, plotting and supporting a criminal group,
 - b) neither he nor his statutory body or a member of his statutory body has been lawfully convicted for an offence concerning the professional conduct of business,
 - c) is not subject of proceedings for the declaration of bankruptcy, is not bankrupt or being wound up, nor a bankruptcy petition has been rejected against him due to lack of estate,
 - d) does not have a history of arrears in the payment of contributions to health insurance, social insurance and contributions to seniors pension savings scheme to be collected by a judicial execution of a decision,
 - e) does not have a history of tax arrears to be collected by a judicial execution of a decision,
 - f) is authorised to deliver supplies, execute building works or provide a service,
 - g) he has not committed any grave professional misconduct over the preceding three years, which can be proven by the contracting authority and contracting entity.
- (2) The tenderer or candidate shall demonstrate his meeting of the conditions of participation pursuant to paragraph 1
- a) letters (a) and (b) by an extract from the criminal record not older than three months,
 - b) letter (c) by a confirmation of the competent court not older than three months,
 - c) letter (d) by a confirmation of the Social Insurance Agency and health insurance agency not older than three months,
 - d) letter (e) by a confirmation of the locally competent tax authority not older than three months,
 - e) letter (f) by a document proving his authorisation to deliver supplies, execute building works or provide a service.
- (3) In the event that a tenderer or candidate is not established in the Slovak Republic and the country of his establishment does not issue any of the documents referred to in paragraph 2 or does not issue any equivalent documents either, they may be replaced by a solemn declaration pursuant to the regulations in effect in the country of his establishment.
- (4) In the event that a tenderer or candidate is established in a Member State other than the Slovak Republic and the law of that Member State does not regulate the concept of solemn declaration, it may be substituted by a statement made before a court, administration authority, notary, any other professional institution or trade institution pursuant to the regulations in effect in the country of origin or in the country of establishment of the tenderer or candidate.
- (5) For the purposes of this Act a grave professional misconduct shall be considered particularly a participation in an agreement limiting the competition in the public procurement and another grave violation of law or grave violation of contractual duties that can be proved by a final decision of the competent public authority. The time limit pursuant to the paragraph 1 (g) lapses since the day the decision becomes final.
- (6) The final decision of the competent public authority for the purposes of this Act shall be considered
- a) final decision of the competent administrative body that cannot be impugned by a charge;
 - b) final decision of the competent administrative body that was not impugned by a charge;
 - c) final court decision by which the charge against the decision or procedure of the administrative body was refused or the proceedings has been discontinued, or
 - d) another final judgement of a court.
- (7) The condition of the participation concerning the personal status pursuant to paragraph 1 (g) shall be met also by the person who was not imposed a fine or who was imposed a lower fine pursuant to a special legal regulation.

(b) Observations on the implementation of the article

445. The governmental experts noted that a number of relevant provisions had been referenced by the Slovak republic as regards the implementation of this provision. As regards the civil law, it was clear from 442 of the Civil Code that monetary damages would be owed to an individual who has suffered loss as a result of an act of corruption.

446. As a further example of the consequences of acts of corruption, the reviewing experts noted that an individual or legal entity convicted of the offence of corruption would be

black-listed, pursuant to section 26 of the Act on Public Procurement following their conviction.

447. The reviewing experts considered that Slovakia had fully implemented this provision of the Convention.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

448. Slovakia confirmed that it had, in accordance with Article 35, taken measures to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible in order to obtain compensation. Sections 420, 424 and 442 of the Civil Code were cited as the key domestic implementing measures.

449. Section 420 contains general provisions outlining the legal duties of individuals who have caused damage by violating a legal duty. Section 442(2) specifically relates to damage caused by a crime of corruption, stating that “damage caused by a crime of corruption is compensated also a non-pecuniary damage in money”.

Civil Code

Section 420

(1) Everyone shall be liable for damage caused by violating a legal duty.

(2) The damage shall be considered caused by a legal entity or by an individual also if they were caused in the course of their activity by those who were used in such activity. These persons themselves shall not be liable according to this Act for the damage caused in this way; their liability under labour law regulations shall not be affected by this rule.

(3) A person who proves not to have caused the damage shall relieve himself of the liability for them.

Section 424

A person who caused damage by an intentional conduct against good manners shall be liable for it.

Section 442

(1) The compensation shall include compensation of the real damages as well as of what the damaged party lost (lost profit).

(2) To damage caused by a crime of corruption is compensated also an intangible damage in money.

(3) The damages shall be compensated in cash; however, the damages shall be compensated by way of restitution in integrum if the damaged party demands so and if it is possible and purposeful.

(4) If the damages were caused by an intentional crime resulting in a property benefit to the criminal, the court may decide that the right to compensation of damages may be satisfied even from things acquired from the property benefit even if they are otherwise not subject to enforcement of a decision according to the provisions of the Civil Procedure Code. Unless the right to compensation of damages is satisfied, the debtor must not dispose of such things mentioned in the decision.

(b) Observations on the implementation of the article

450. The governmental experts noted the general provisions in existence under the Civil Code, particularly section 420 which states that everyone shall be liable for damage caused by violating a legal duty. This general duty could form the basis for the types of claims envisaged by Article 35 of the Convention.

451. However, Article 442 of the Civil Code goes further by providing specifically that intangible damage caused by an act of corruption must be compensated. In light of these provisions, the reviewing experts considered that the Slovak Republic was in full compliance with this provision of the Convention.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

452. The Slovak Republic confirmed that it had implemented this provision of the Convention relating to the establishment of a specialised authority in combating corruption through law enforcement. At all stages of the law enforcement process a specialised body exists to deal specifically with corruption-related offences.

453. As regards investigation, the Anti-Corruption Bureau has exclusive jurisdiction over corruption and economic crime offences. The Bureau was established on the first of January 2004, its headquarters are in Bratislava and it has four regional divisions (Bratislava, West, Centre, East). The Bureau operates under the President of the police force and consists of three specialised units; Analytical and Organisational Unit, Investigation Unit and Operational Unit. One hundred and fifty police officers work in the Bureau and administrative staff also provide support

454. The Special Prosecution Office is the independent part of the General Prosecution Office with responsibility for prosecuting corruption-related offences. The Office has 25 budgeted staff with 22 prosecutors currently working there. The process of recruitment for prosecutors in the Special Prosecution Office is thorough, taking time at least 9 months for each prosecutor. In order to be eligible for a position with the Special Prosecution Office, candidates must have previously worked in the General Prosecutor Office and have 10 years of professional skills at minimum.

455. Other conditions which must be satisfied by prospective employees of the Special Prosecution Office include; possession of the certificate of National Security Office of the Slovak Republic entitling him to handle classified material up to degree "Top secret", successful completion of a psychological test, successful completion of a special selection procedure regulated by the Act No. 154/2001 Coll. of Laws on prosecutors and trainers of prosecution service, receipt of an official recommendation from the Council of Prosecutors, and a clear criminal record.

456. Prosecutors at the Special Prosecution Office also receive a comprehensive training regime provided by the Justice Academy. Prosecutors also take part in national, regional and international training and education projects.

457. As regards the legal basis for the Special Prosecution Office, Slovakia cited section 14 of the Act No. 301/2005 Coll. Code of Criminal Procedure, Act no. 458/2003 Coll. on

Special Court and Special Prosecution Office, Act no. 291/2009 Coll. on Specialized Criminal Court and Organisational Order Regulation of the Presidium of Police Force.

Act No. 301/2005

Section 14. Jurisdiction of the Specialized Criminal Court

The Specialized Criminal Court shall have the jurisdiction over the persons in respect of

- a) criminal offence of first degree murder,
- b) criminal offence of deceitful practices in public procurement and public auction pursuant to Section 266 paragraph 3 of the Criminal Code,
- c) criminal offence of forgery, fraudulent alteration and illicit manufacturing of money and securities pursuant to Section 270 paragraph 4 of the Criminal Code,
- d) criminal offence of abuse of power by a public official pursuant to Section 326 paragraph 3 and 4 of the Criminal Code in concurrence with criminal offence pursuant to letters b), c), e), f), g), j) or k),
- e) criminal offences of passive bribery pursuant to Section 328 through 331 of the Criminal Code,
- f) criminal offences of active bribery pursuant to Section 332 through 335 of the Criminal Code,
- g) criminal offence of trading in influence pursuant to Section 336 of the Criminal Code,
- h) the criminal offence of establishing, masterminding and supporting a criminal group and the criminal offence of establishing, masterminding and supporting a terrorist group,
- i) particularly serious crimes committed by a criminal group or a terrorist group,
- j) criminal offences against property under Chapter Four of the Special Part of the Criminal Code or economic criminal offences under Chapter Five of the Special Part of the Criminal Code, if such criminal offence causes a damage or brings a benefit which is at least twenty-five thousand times higher than the amount of small damage set out in the Criminal Code, or if the extent of that offence is at least twenty-five thousand times higher than the amount of small damage set out in the Criminal Code,
- k) criminal offences against financial interests of the European Communities,
- l) criminal offences related to those referred to under a) to j) or k), provided that the requirements for the joinder of proceedings are met.

458. Act No. 458/2003 Coll. officially established both the Special Court and the Special Prosecution Office.

459. The Special Court was replaced by the Specialized Criminal Court by the Act No. 291/2009 Coll. This change was introduced following a decision of the Constitutional Court of 20 May 2009 concerning the unconstitutionality of the original Special Court. The new law addressed the objections of the Constitutional Court to the Special Court which centered on the jurisdiction of the Special Court and the remuneration received by its members. The Special Prosecution Office has exclusive jurisdiction to prosecute the cases falling within the competence of the Specialized Criminal Court.

(b) Observations on the implementation of the article

460. During the country visit, the reviewing experts received an informative presentation from a representative from the Anti-Corruption Bureau regarding its composition and key functions.

461. As regards the staff working at the Bureau, the officers working there are police officers who are not permitted to work elsewhere while working for the Bureau, in accordance with the Code on Civil Service of Police Officers. An exception to this rule is made in order that officers may engage in voluntary educational activities. With respect to administrative staff, they are required to work full-time as civil employees under the Ministry of Interior.

462. The reviewing experts were also informed that the Anti-Corruption Bureau has a separate budget that is determined by the Ministry of Interior. In this sense, the Bureau is dependent on the Ministry for material and technical support.
463. As noted above, the prosecution of corruption offences that fall under the competence of the Specialised Criminal Court is taken forward by a specialised prosecution unit established by law. This is known as the Special Prosecution Office, a specialised unit that falls within the portfolio of the Prosecutor General's Office. Notwithstanding this, the Special Prosecutor's office is independent.
464. The Special Prosecutor's Office was established in 2004 to strengthen the fight against corruption and organised crime. The jurisdiction of the Special Prosecutors Office covers the whole territory of Slovakia. There are currently 22 prosecutors working in the Office, divided into 2 departments and a separate unit. One Department is for General Crime, containing the sections on corruption and organised crime. The second department is responsible for Organised Crime. The separate unit is for the prosecution of public officials.
465. Results up to now appear to justify the creation of both the Anti-Corruption Bureau and the Special Prosecutor's Office as there have been several important court rulings in relation to both corruption and organised crime in recent years. New legislation adopted in 2005 further supports the prosecution of corruption offences and organised crime offences (i.e. use of technical evidence collection devices).
466. At the time of the report, this office was staffed by 22 prosecutors and is envisaged to rise to 25. The prosecutors of the Specialised Cri will then appear before a Specialised Criminal Court which is tasked by section 14 of the Code of Criminal Procedure to deal with matters of organized crime, including corruption.
467. During the country visit, the governmental experts were informed that since 2004, all corruption-related offences have been brought before the Specialised Criminal Court without exception.
468. The Specialised Criminal Court effectively commenced its activities on 1 June 2005, but it was subsequently abolished by a Constitutional Court ruling. It was re-established on 17 July 2009, when the Court also received the mandate to consider corruption-related offences (there is no monetary threshold). 12 major offences fall under the competence of the Specialized Criminal Court. Such offences include, *inter alia*, aggravated murder, matters concerning procurement and public funds, abuse of powers of public officials, crimes pertaining to criminal groups, and matters detrimental to the European Union, as well as corruption-related offences.
469. There are presently 13 judges working in the Specialised Criminal Court. Judges who serve in this Court are required to have special security clearance and be over 35 years of age. Judges receive a salary that is 1.3 times that of a Parliamentarian. Each judge is responsible for approximately 15-16 cases per year. Functional immunity is granted to the judges, pursuant to the Judges Act.
470. The Specialised Criminal Court has jurisdiction to consider, *inter alia*, Parliamentary Members, State Secretaries, Chairmen and Deputy Chairmen of the Supreme Audit

Office, Judges, Prosecutors, Public Ombudsman and Heads of Government Office. If there is an appeal against a judgment of the Court, it would go to the Supreme Court. To date, 1157 judgments have been rendered by the Court with a low acquittal rate of only 7%.

471. The reviewing experts noted that prior to the establishment of the Specialised Criminal Court, 254 corruption-related had been considered by the common court system. However, since the establishment of the Specialised Criminal Court and the Special Prosecution Office, 790 corruption-related cases have been considered.

472. As regards potential complaints regarding the conduct of judges in the Specialised Court, such complaints would go to the President of the Court who would be required to consider such a complaint pursuant to the Code of Ethics. Disciplinary sanctions would be determined by the National Judicial Council. The Specialised Criminal Court does not have a separate budget, but receives funding directly from the Ministry of Justice.

473. The reviewing experts also recognised the existence of a further specialised enforcement body, the Financial Intelligence Unit (FIU). The FIU was established in 1996 and currently has 39 police officers and 1 administrative assistance working for the Unit. The responsibilities of the FIU include, *inter alia*, the screening of unusual transaction reports (UTRs) pursuant to section 4 of Act No. 297/2008. The Unit also contains the Asset Recovery Office. It has been a member of EGMONT since 1997 and is a member of MONEYVAL. It was also mentioned that the FIU take part in a Europe wide FIU network (FIUNET). The Unit is subsidiary to the Ministry of Interior.

474. The reviewing experts noted that in order to continue the effective work of these bodies and to ensure their independence, the Slovak Republic may wish to consider ways of providing the Anti-Corruption Bureau with greater financial independence from central government.

(c) Successes and good practices

475. The reviewing experts recognised the significant efforts made by Slovakia in the establishment and effective functioning of specialised authorities at each stage of the law enforcement process. It was evident from the country visit that the members of these specialised bodies were highly motivated and the statistics provided to the reviewing experts demonstrate a significant increase in the number of corruption cases brought before the courts following the introduction of this structure.

476. The reviewing experts consider that the actions of the Slovak Republic in this regard should be considered a best practice and should serve as an example for other States seeking to reform their law enforcement mechanisms so as to effectively combat corruption.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary

purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

477. The Slovak Republic confirmed that it has implemented measures to encourage persons who participate or who have participated in the commission of a corruption-related offence to supply useful information to the competent authorities for investigative and evidentiary purposes. In support of this, the Slovak Republic cited sections 215(3), 218 - 219, 228(3), 281(2) and 283(1) of the Code of Criminal Procedure.

478. These sections contain general provisions regarding the potential stay of proceedings where an individual has significantly contributed to clarifying a case of corruption or other types of criminal offence. Following the provision of such information, pursuant to section 219, the Prosecutor can then acknowledge the cooperation and no longer pursue the prosecution or can decide to resume the prosecution.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 215. Stay of Criminal Prosecution

(3) The prosecutor may stay the criminal prosecution against the accused who has significantly contributed to clarifying a case of corruption, criminal offence of setting up, masterminding or supporting a criminal group, criminal offence of setting up, masterminding or supporting of a terrorist group or a felony committed by an organised group, a criminal group, or a terrorist group, or to identifying or convicting the perpetrator of such criminal offence, where the interest of the society in clarifying that criminal offence is stronger than its interest in the criminal prosecution against that accused; criminal prosecution may not be stayed in respect of the organiser, instigator or the person who commissioned the criminal offence he has helped to clarify.

Section 218. Conditional stay of criminal prosecution of a cooperating accused

(1) The prosecutor may conditionally stay the criminal prosecution of the accused who has significantly contributed to clarifying a case of corruption, criminal offence of setting up, masterminding and supporting a criminal group, criminal offence of setting up, masterminding and supporting a terrorist group, or a felony committed by an organised group, a criminal group, or a terrorist group, or to identifying or convicting the perpetrator of such a criminal offence, where the interest of the society to clarifying that criminal offence is stronger than its interest in the criminal prosecution of the accused; criminal prosecution may not be conditionally stayed in respect of the organiser, instigator or the person who commissioned the crime to the clarification of which he contributed.

(2) The resolution to conditionally stay the criminal prosecution shall set out a probationary period of two to ten years for the accused. The probationary period shall start running from the date on which the resolution to conditionally stay the criminal prosecution became final. The resolution shall set out the duty of the accused to respect, during the probationary period, the requirements set out in paragraph 1.

(3) The resolution to conditionally stay the criminal prosecution shall be served on the accused and the victim; both the accused and the victim may challenge the resolution by filing a complaint that has a suspensive effect.

Section 219

(1) If the accused fulfilled the requirements set out in Section 218 paragraph 2 during the probationary period, the prosecutor shall decide to acknowledge good conduct of the accused. Failing that, the prosecutor shall decide, including during the probationary period, to resume the prosecution. He shall then issue a resolution to acknowledge good conduct or to resume the prosecution.

(2) If no decision is made pursuant to paragraph 1 within two years of the termination of the probationary period without the fault of the accused, this shall be deemed as proof of his good conduct.

(3) The resolution pursuant to paragraph 1 shall be served on the accused and on the victim; the accused and the victim may challenge it with a complaint that has a suspensive effect.

(4) The date on which the resolution on good conduct of the accused becomes final, or the date of expiry of the time limit pursuant to paragraph 2, shall be deemed as the date on which criminal prosecution is effectively stayed pursuant to Section 9 paragraph 1 (e).

Section 228. Suspension of criminal prosecution

(3) A police officer may suspend the criminal prosecution with prior consent of the prosecutor against the accused who has significantly contributed to clarifying a case of corruption, the criminal offence of setting up, masterminding and supporting a criminal group, the criminal offence of setting up, masterminding and supporting a terrorist group, or a felony committed by an organised group, a criminal group or a terrorist group, or to identifying or convicting perpetrators of such criminal offences; criminal prosecution may not be suspended in case of the organiser, instigator or the person who commissioned the crime to the clarification of which he contributes.

Section 281. Stay of Criminal Prosecution

(1) The court shall stay the criminal prosecution if, at the main trial, it establishes the existence of any of the circumstances referred to in Section 9 paragraph 1.

(2) The court shall stay the criminal prosecution if, at the main trial, it establishes the existence of any of the circumstances referred to in Section 215 paragraph 3.

(3) Where the court makes a decision pursuant to paragraphs 1 or 2, it shall recommend the victim who filed a damage claim to seek its settlement through civil proceedings or the proceedings before another competent body.

(4) The decision pursuant to paragraphs 1 or 2 may concern only the acts covered by the indictment.

(5) The prosecutor and the injured person may challenge the decisions taken pursuant to paragraphs 1 or 2 by a complaint that has a suspensive effect.

Section 282. Conditional stay of prosecution and conciliation

(1) The court may conditionally stay the prosecution if, at the main trial, it establishes the fulfilment of the conditions set out in Section 216 paragraph 1.

(2) The court may conditionally stay the criminal prosecution of a cooperating accused if, at the main trial, it establishes the fulfilment of the conditions set out in Section 218 paragraph 1.

(3) The court may approve the conciliation agreement and stay the criminal prosecution if, at the main trial, it establishes the fulfilment of the conditions set out in Section 220; it shall proceed according to Sections 221 to 227.

(4) The prosecutor may file a complaint against a decision approving a conciliation agreement pursuant to paragraphs 1 to 3; the accused and the victim may file a complaint against the decision to conditionally stay the criminal prosecution; the complaint has a suspensive effect.

Section 283. Suspension of Criminal Prosecution

(1) The court shall suspend the criminal prosecution if, at the main trial, it establishes the existence of any of the circumstances set out in Section 228 paragraph 2, Section 241 paragraph 3 or Section 244 paragraph 4, or may suspend the criminal prosecution if, at the main trial, it establishes the existence of any of the circumstances set out in Section 228 paragraph 3.

(2) The court shall suspend the criminal prosecution also if it is not possible to serve the summons to attend the main trial on the accused.

(3) When the reason for the suspension is no longer valid, the court shall resume the criminal prosecution.

(4) The prosecutor and the accused may file a complaint against the decision whereby the court suspended the criminal prosecution or denied the motion for its continuation.

(5) The court shall suspend the criminal prosecution if it finds that another generally binding legal regulation of a lower legal force, the application of which is decisive for the decision about the guilt and the sentence, is in contradiction with a generally binding legal regulation of a higher legal force or with an international treaty, and shall lodge a petition to commence the proceedings before the Constitutional Court. The finding of the Constitutional Court shall be binding for the court.

(b) Observations on the implementation of the article

479. The Slovak Republic noted that during an investigation, the law enforcement authorities have the ability to encourage suspects to provide information which will help conclude the investigation.

480. Prosecutors and Police Officers with the consent of a Prosecutor can stay or conditionally suspend proceedings against a person who provides information that helps

solve a crime. The Court may also reduce custodial sentences below the minimum prescribed by law for any suspect who has assisted during the investigation.

481. During the country visit, the national authorities confirmed that persons have an obligation to report a crime that they may be aware of by law and there is a hotline to report corruption-related offences, which had also been promoted through media campaigns. The corruption hotline is one of the initiatives of European Anti-Corruption NetworkLine. It is open from 8:00 to 15:00 (Monday to Friday). Such reporting can be done anonymously. Moreover, information can also anonymously be sent via email.
482. The Slovak Republic also has the capacity to cooperate with other States and to enter into agreements with them in the investigation of such offences, as referred to in the observations of UNCAC article 48.
483. As an example of the application of the provision incentives for cooperation with law enforcement authorities, officials outlined a case in which surveillance equipment was used to identify the bribery of public officials during the import of equipment into the Slovak Republic. Three individuals were indicted and were shown the video evidence that had been acquired. As a result, two of them decided to plead guilty and were offered reduced sentences for cooperation in the investigation of the case. Rather than being sentenced to 5 – 12 years, a suspended sentence of three years was applied meaning that they did not have to go to jail.
484. The third individual continued to deny the offence and consequently the SPO were able to prove his involvement in the least number of crimes (6, instead of 15 in relation to the cooperative individuals). However, due to the lack of mitigating circumstances and lack of cooperation the prosecutors proposed a 7 year tariff, a 6 year period was in fact imposed.
485. The reviewing experts considered the Slovak Republic to be in compliance with this provision of the Convention.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

486. The Slovak Republic confirmed that it had implemented measures that provide for the possible mitigation of punishment of an accused person who provides substantial cooperation in the investigation or prosecution of a corruption-related offence, citing section 39, paragraphs 2 (b) and (e) of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 39. Exceptional Reduction of a Custodial Penalty

(2) The court may also reduce the term of imprisonment below the minimum rate set out in this Act also when sentencing an offender

b) who has significantly contributed to clarifying a criminal offence committed for the benefit of a criminal group or a terrorist group, or who helped to prevent the commission of a criminal offence prepared or attempted by another person for the benefit of a criminal group or a terrorist group by reporting those other persons' actions to the authorities with competence for criminal proceedings, and providing them with information they would be otherwise unable to obtain, thus enabling them to prevent or mitigate the consequences of the criminal offence, identify or convict its offenders, and secure the evidence of the criminal offence with a view to the conviction of a criminal group or a terrorist group,

e) who has made a particularly significant contribution to clarifying the criminal offence of corruption pursuant to the relevant Sections of Chapter VIII Title Three of this Act, the criminal offence of establishing, masterminding or supporting a criminal group pursuant to Section 296, the criminal offence of establishing, masterminding or supporting a terrorist group pursuant to Section 297, or a particularly serious felony committed by an organised group, a criminal group or a terrorist group, or to identifying or convicting offenders of such criminal offences by providing evidence thereof in criminal proceedings, if the court believes that, considering the nature and degree of the crime committed, the purpose of punishment can be achieved also by a reduced penalty; custodial penalty may not be reduced below the minimum rate for a person who organised, instigated or commissioned a crime, of which he has submitted evidence in criminal proceedings.

(b) Observations on the implementation of the article

487. The governmental experts noted that section 39 of the Criminal Code provides for the reduction of a custodial penalty under exceptional circumstances of a person “who has made a particularly significant contribution to clarifying the criminal offence of corruption” (sub-paragraph 2(e)).

488. During the country visit, the law enforcement authorities informed the reviewing experts of one case where there were 3 individuals involved in active bribery. Two pleaded guilty and were offered reduced sentences for cooperation in the investigation of the case. Rather than 5-12 years in prison, a suspended sentence of 3 years was applied, meaning that they did not receive a jail sentence. The third individual continued to deny the offence and consequently, the Special Prosecution Office was able to prove his involvement in the least number of crimes (6, instead of 15 in relation to the cooperative individuals). However, due to the lack of mitigating circumstances and lack of cooperation, the Prosecutors proposed a 7 year tariff and a 6 year period was handed down by the court.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

489. The Slovak Republic confirmed that it was in compliance with the provision under review, citing its previous answer to paragraph 1 of UNCAC article 27.

(b) Observations on the implementation of the article

490. The governmental experts noted that pursuant to section 219(1) of the Code of Criminal Procedure, the Prosecutor may acknowledge the good conduct of the accused

who has been placed under a conditional stay of proceedings pursuant to section 218(2), by issuing a resolution acknowledging such good conduct. The experts interpreted this to effectively be a form of immunity. During the country visit, it was confirmed that, in practice, this was accurate, but members from the Prosecution Service of the Slovak Republic highlighted that under Slovak law, this would not be considered as the provision of immunity in the technical sense of the word.

491. Further reference was made to section 228(3) of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 228. Suspension of criminal prosecution

(3) A police officer may suspend the criminal prosecution with prior consent of the prosecutor against the accused who has significantly contributed to clarifying a case of corruption, the criminal offence of setting up, masterminding and supporting a criminal group, the criminal offence of setting up, masterminding and supporting a terrorist group, or a felony committed by an organised group, a criminal group or a terrorist group, or to identifying or convicting perpetrators of such criminal offences; criminal prosecution may not be suspended in case of the organiser, instigator or the person who commissioned the crime to the clarification of which he contributes.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

492. The Slovak Republic stated that it was in compliance with the provision under review, citing Act No. 256/1998 Coll. on Witness Protection.

(b) Observations on the implementation of the article

493. During the country visit, it was confirmed that a person who provides substantial cooperation in the investigation or prosecution of a corruption-related offence would be covered by the same provision that would be applied to UNCAC article 32.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

494. The Slovak Republic provided that it is in compliance with the provision under review.

(b) Observations on the implementation of the article

495. During the country visit, the explanations provided by the law enforcement authorities indicated that there is no obstacle to providing *ad hoc* cooperation as stipulated in the provision under review. While this does not represent a full implementation of this provision, the reviewing experts acknowledged that, in practice, it allowed for mitigating circumstances and acknowledgement of good conduct to be applied.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

496. The Slovak Republic highlighted sections 152 and 340 of the Criminal Code.

Criminal Code

Section 340. Failing to Report a Criminal Offence

(1) Any person who obtains trustworthy information about the commission of a felony by another person, carrying a maximum custodial sentence of at least ten years, or one of corruption offences set forth under Title Three of Chapter Eight of the Special Part of this Act, and fails to report such felony or criminal offence without delay to a body involved in the criminal proceedings or to the Police Force, or in case of a member of the armed forces to his commanding officer or service body, or in case of a person serving a custodial sentence or remanded in custody to a member of the Corps of Prison and Court Guard, shall be liable to a term of imprisonment of up to three years.

(2) No person who commits the offence referred to in paragraph 1 shall be held criminally liable if he could not have made such a report without putting himself or a close person at the risk of death, bodily harm, other serious harm or criminal prosecution.

(3) No person who commits the offence referred to in paragraph 1 shall be held criminally liable if, by reporting the criminal offence, he would breach a) confessional secrecy or secrecy of information he received orally or in writing under the seal of secrecy as a person entrusted with pastoral care, or

b) non-disclosure obligation laid down by law.

497. The Slovak Republic stated that no statistical information was kept in relation to cooperation between the public sector (officials) and law enforcement bodies. Cooperation is provided on a case-by-case basis depending on the circumstances.

(b) Observations on the implementation of the article

498. The governmental experts highlighted that subparagraph (a) of UNCAC article 38 relates to cooperation between national authorities and noted that the information provided is outside the scope of the provision under review.

499. However, during the country visit, the national officials emphasized that *ad hoc*, personal contacts were used between officials in public bodies and those in the Anti-Corruption Bureau and Special Prosecutors Office in order to facilitate the transfer of information between them.

500. Officials from the Financial Investigation Unit and the Anti-Corruption Bureau also informed the governmental experts that they have visited other public bodies in order to provide them with training sessions on their work and existing legislative framework in place to fight corruption.
501. Furthermore, an Inter-Ministerial Network Group, which sits under the Ministry of the Interior, meets to discuss the implementation of the national anti-corruption strategy. Meetings are not held regularly, but on, at least, a quarterly basis. Other, *ad hoc* working groups have also been established in order to deal, in a coordinated manner, with specific corruption-related issues.
502. Officials from the Special Prosecution Office noted that corruption-related offences fall under a narrow area of law. So as to ensure that the Prosecutors in the Special Prosecution Office have a sufficient degree of training, Prosecutors are involved in self-education, collecting know-how from colleagues locally and abroad. The most effective learning relationship has, to date, been with the United States who have provided training through the medium of the US Embassies in Bratislava and Prague. These embassies have programs in place for the purpose of training Prosecutors in Central Europe, these take place once or twice a year and Prosecutors from the Slovak Republic attend such sessions. US Prosecutors and FBI agents take part in this training. A study trip has also been organised to the United States for prosecution and investigation officials.
503. In relation to self-education, the Special Prosecution Office also outlined the day-to-day learning that exists during the prosecution of cases. Knowledge developed from this work are compiled together and shared among Prosecutors as a knowledge tool. Some European programmes have also been used to train Prosecutors. An example was the knowledge-exchange meeting that was recently held with Prosecutors from Montenegro.
504. Annually, training conferences are held between investigators from the Anti-Corruption Bureau and Prosecutors from the Specialised Criminal Court. A judicial academy has also been developed in order to provide trainings. Moreover, a memorandum of understanding has also been signed with the UNDP Bratislava Office, which is also used as a forum for the dissemination of knowledge.
505. The reviewing experts requested information in relation to the cooperation between Prosecutors, in the general, and the Special Prosecution Office. The Government Prosecutors noted that crimes of corruption are addressed exclusively by the Special Prosecution Office. If a Prosecutor in the General Office comes across a corruption file, then they would have to pass this to the Special Prosecution Office. In practice, all corruption-related cases would immediately be forwarded to the Special Prosecution Office for action. Section 14 of Code of Criminal Procedure outlines the jurisdiction of the Specialised Criminal Court. In exceptional cases, the Special Prosecution Office is able to take over cases being taken forward by the General Prosecutor's Office. Such cases would typically involved organized crime.
506. Pursuant to section 152 of the Criminal Procedure Code, any information "suitable" for the criminal investigation should be reported to the Police, notwithstanding the origin of such information. In particular, if an "investigator" from other Governmental agency has information on a possible crime of corruption, he or she is obliged to pass this

information to the appropriate Police body or Prosecutor. In a practice, it was held often to happen.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

507. The Slovak Republic cited section 339, 340 and 341 of the Criminal Code. It further stated that no statistical information was on record in relation to cooperation between the public sector (officials) and law enforcement bodies. Cooperation is provided on a case-by-case basis depending on the circumstances of the case.

(b) Observations on the implementation of the article

508. Pursuant to section 339(2)(b) of the Criminal Code, it is a criminal offence to aid and abet anyone committing a crime that procures property as a benefit for himself, herself or others.

509. Section 340 (Failing to report a criminal offence) was also quoted and deemed inapplicable if, by reporting, the person who commits the offence breaches “confessional secrecy or secrecy of information he received orally or in writing under the seal of secrecy as a person entrusted with pastoral care or in virtue of a non-disclosure obligation laid down by law”.

510. Section 341 (Failing to prevent a criminal offence) states that it is an offence for anyone “who obtains trustworthy information suggesting that another person is preparing or committing a felony that carries a maximum custodial sentence of at least ten years under this Act, or one of corruption offences set forth under Title Three of Chapter Eight of the Special Part of this Act, and fails to prevent the commission or completion of such felony or criminal offence either in person or through other competent person or a competent body, shall be liable to a term of imprisonment of up to three years”.

511. The reviewing experts noted that a range of sanctions reported by the Slovak Republic. However, of interest was the cooperation provided on a case-by-case basis.

512. The Slovak Republic noted that the Asset Recovery Office, when developing asset profiles of individuals, require and receive information from private sector entities including banks and other financial institutions. This information was requested under Act No. 171/1993.

513. Regarding cooperation with the private sector, Law No. 297/2008 was also deemed to be relevant. In particular, section 5 provides for a list of institutions that are obliged to provide UTRs. Banks have a further obligation to be aware of the list of transactions that

may be viewed as suspicious, according to section 4(2). Daily conversations are held via phone with compliance officers in these private sector entities to discuss the indicators listed in section 4(2). Last year, 10 training sessions were provided to compliance officers in relevant financial institutions by the FIU.

514. The Slovak Republic noted that as part of this process of exchanging information with Banks and other financial institutions, members of the FIU were invited to meetings of relevant financial institutions in order to provide information and trainings in relation to UTRs and to elaborate upon the information that the FIU requires from these institutions. Furthermore, the Slovak Republic noted that information was available on the website of the FIU, outlining information relevant to each type of reporting entity and the issues that each sector should be aware of.
515. The Slovak Republic noted that the FIU had concluded MoUs with other FIUs in 10 States including the Ukraine, Canada and Australia. This provides a legal basis for the international exchange of information. EGMONT had also been used since 1997. This network is regularly used by the FIU, as well as the FIUNET, a network for FIUs within the EU.
516. The Slovak Republic noted that there are presently 40 staff members the FIU, which was established in 1997. The FIU only identifies the relevant assets and other law enforcement bodies are responsible for seizing and confiscating such assets.
517. Officials from the VUB Bank indicated that the types of behaviour which might give rise to a UPR would be, for example, where an individual is not known by the bank. Such officials indicated that communication is maintained on an ongoing basis between the FIU and the banking sector. The FIU provide a half-day training to VUB Bank on a yearly basis.
518. Officials from the Slovakian Stock Exchange outlined the regulations applying to their members, particularly those in relation to the exclusion of members in the event that certain behaviour is found to exist. They outlined that training is provided by the Stock Exchange to members of the Slovakian Law Enforcement authorities.
519. Members of Ernst and Young Slovakia outlined that they maintained relationships both with the public and private sectors. The biggest issues that they presently address are in relation to the FCPA and UK Bribery Act, as these are the key concerns of their clients. Ernst and Young further provided that it cooperates with the Police. They are also increasingly cooperating with the Police.
520. The reviewing experts considered that Slovakia was in full compliance with this provision of the Convention and that the work of the Financial Intelligence Unit with financial institutions represents a good practice.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

521. The Slovak Republic confirmed that it had implemented this provision of the Convention, citing section 340 of the Criminal Code.

(b) Observations on the implementation of the article

522. The governmental experts noted the reference previously made to the European Anti-Corruption NetworkLine Government Office of Slovak Republic was an example of where nationals are encouraged to report information on potential corruption-related offences.

523. The reviewing experts considered Slovakia to be in compliance with this provision of the Convention.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

524. The Slovak Republic confirmed that it was in compliance with the provision under reviewing, citing section 91, paragraphs 4 (a) and (b) of the Act No. 483/2001 Coll. on Banks.

**Act No. 483/2001 Coll. on Banks
Section 91**

(4) A report on matters concerning a client that are subject to bank secrecy shall be submitted by a bank or branch Office of a foreign bank without the prior approval of the client concerned solely upon request made in writing by:

- a) a court of justice, including a notary public in the capacity of a court Commissioner, for the purposes of civil proceedings to which the client of the bank or branch of a foreign bank is a party, or the subject of which is the property of the client of the bank or branch office of a foreign bank,
- b) a law enforcement authority for the purposes of criminal prosecution,

...

g) the criminal police and financial police services of the Police Corps for the purposes of detecting criminal acts, the detection of and search for their perpetrators, and especially in the case of tax evasion, illegal financial operations and Money laundering,

...

j) a competent state authority for the purposes of discharging obligations arising from an international treaty binding upon the Slovak Republic, where the discharge of obligations according to this treaty may not be declined on account of bank secrecy.

(b) Observations on the implementation of the article

525. Sub-sections (a), (b) and (g) of section 91 the Act on Banks permits the collection of banking information by law enforcement authorities in pursuit of a criminal prosecution and by criminal and financial police officers “for the purposes of detecting criminal acts, the detection of and search for their perpetrators”.

526. Sub-section (j), furthermore, specifically provides that information must be provided by a financial institution to a competent state authority for the purposes of discharging obligations arising from an international treaty binding upon the Slovak Republic, consequently, the discharge of obligations arising from the UNCAC may not be declined on account of bank secrecy. This provision in particular appeared to ensure that a request for information in relation to an offence established in accordance with UNCAC could not be rejected on the grounds of bank secrecy.

527. Governmental experts heard from representatives of the banking sector who indicated that, where required to by domestic legislation, they will always comply with a request for information from law enforcement authorities. During the county visit, it was also noted that the FIU provided training to financial institutions in Slovakia regarding their obligation to report suspicious transactions and their obligations to comply with law enforcement authorities when they receive a request pursuant to Act No. 483/2001 Coll. on Banks.

528. The reviewing experts were of the view that banking secrecy is not used as a barrier to the provision of information and that Slovakia was therefore in compliance with this provision of the Convention.

(c) Successes and good practices

529. The experts deemed section 91 of the Act on Banks to be a good practice, as it provides law enforcement officials with the means to obtain the bank details of relevant individuals for the purpose of detecting criminal acts.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

530. The Slovak Republic stated that they had adopted measures to take into consideration previous convictions in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to a corruption-related offence. In this regard, section 488a of the Code was specifically cited.

531. The Code of Criminal Procedure obliges law enforcement agencies to prosecute an offender for every criminal offence they have committed where there is sufficient information to do so.

(b) Observations on the implementation of the article

532. With regards to criminal records originating in another State, the Slovak Republic reported that it is permissible to use such records in criminal proceedings, although it has no record of whether or not this has ever been used.

533. Therefore, investigators can obtain information about the accused, no matter where he or she may have offended. This may be useful in a criminal investigation or prosecution.

534. As there is no obstruction to the use of criminal records from another State, the reviewing experts deemed the provision under review to have been sufficiently implemented.

Article 42 Jurisdiction

Paragraph 1

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

535. The Slovak Republic cited section 3 of the Criminal Code.

Criminal Code

Section 3. Territorial Applicability

(1) This Act shall be applied to determine the criminal liability for an act committed on the territory of the Slovak Republic.

(2) The criminal offence is considered as having been committed on the territory of the Slovak Republic even if the offender

a) committed the act, at least in part, on its territory, if the actual breach of or threat to an interest protected under this Act took place or was intended to take place, in whole or in part, outside of its territory, or

b) committed the act outside of the territory of the Slovak Republic, if the actual breach of or threat to an interest protected under this Act was intended to take place on its territory, or such a consequence should have taken place, at least in part, on its territory.

(3) This Act shall also be applied to determine the criminal liability for an act committed outside of the territory of the Slovak Republic aboard a vessel navigating under the State flag of the Slovak Republic, or board an aircraft entered in the aircraft register of the Slovak Republic.

536. The Slovak Republic provided details of Judgment R 24/1971. Even if a criminal offence began and was finished abroad (where respectively such an act is not an offence pursuant to the foreign law), it is punishable, if according to the intention of the offender, the act had to be finished on the territory of the State (section 3(2) of the Criminal Code).

(b) Observations on the implementation of the article

537. Section 3 of the Criminal Code was deemed to have legislatively implemented the provision under review. Regarding the extended principle of territoriality (section 3(3)), an investigator is able to pursue offences committed (even if partially committed) against an interested party protected by law on the territory of the Slovak Republic, on any ship or aircraft registered in the Slovak Republic and against any citizen of the Slovak Republic.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

538. The Slovak Republic confirmed that it had adopted measures to establish jurisdiction over an offence that has been committed against a national of the Slovak Republic, citing section 5 of the Criminal Code.

Criminal Code

Section 5

This Act shall also be applied to determine the criminal liability for a particularly serious felony if the act was committed outside of 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.

539. To date, the Slovak authorities have not had such a case under investigation or prosecution.

(b) Observations on the implementation of the article

540. Section 5 of the Criminal Code has legislatively implemented the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

541. The Slovak Republic confirmed that it had implemented measures to establish jurisdiction over a corruption-offence when the offence is committed by a national of the Slovak Republic, pursuant to section 4 of the Criminal Code.

Criminal Code

Section 4. Personal Applicability

This Act shall also be applied to determine the criminal liability for an act committed outside of the territory of the Slovak Republic by a Slovak national or a foreign national with permanent residency status in the Slovak Republic.

(b) Observations on the implementation of the article

542. This first part of the provision under review appears to have been implemented by section 4 of the Criminal Code. During the country visit, it was confirmed that a stateless

person could also be covered, depending on whether or not the crime was committed in the Slovak Republic (section 7 of the Criminal Code). Therefore, jurisdiction would be based on where the crime was committed. If the crime takes place in the Slovak Republic, then regardless of whether or not the person is a national of the Slovak Republic, a foreigner or a stateless person, the Slovak Republic would have jurisdiction.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

543. The Slovak Republic cited section 6 of the Criminal Code.

Criminal Code

Section 6

(1) This Act shall be applied to determine the criminal liability for an act committed outside of the territory of the Slovak Republic by a foreign national who does not have a permanent residency status in the Slovak Republic also where

- a) the act gives rise to criminal liability under the legislation effective on the territory where it was committed,
- b) the offender was apprehended or arrested on the territory of the Slovak Republic, and
- c) was not extradited to a foreign State for criminal prosecution purposes.

(2) However, the offender referred to in paragraph 1 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.

(b) Observations on the implementation of the article

544. During the country visit, two situations were discussed. Firstly, when the predicate offence has been committed outside of the Slovak Republic but the offence of money laundering in the Slovak Republic, then Slovak jurisdiction applies. Secondly, if the offence of money laundering is committed outside the Slovak Republic and not by a Slovak national, jurisdiction would only be established through section 7 of the Criminal Code. If there is a regional or international agreement in place that obliges the Slovak Republic to prosecute such an offence, and this agreement has been ratified and published, a prosecution will be taken forward.

545. The reviewing experts considered Slovakia to be in compliance with this provision of the Convention.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

546. The Slovak Republic cited sections 3 to 7a of the Criminal Code regulating the criminal liability of an individual for a particular act, in conjunction with the definitions of relevant criminal offences against the Republic (sections 311 to 320 of the Criminal Code) or a public authority (sections 321 to 325 of the Criminal Code).

Criminal Code

Section 5

This Act shall also be applied to determine the criminal liability for a particularly serious felony if the act was committed outside of 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.

Section 5a

This Act shall be applied to determine the criminal liability for the criminal offence of illicit manufacturing and possession of narcotics or psychotropic substances, poisons or precursors, and trafficking in them (Section 171 and 172) forgery, fraudulent alteration and illicit manufacturing of money and securities (Section 270), uttering counterfeit, fraudulently altered and illicitly manufactured money and securities (Section 271), manufacturing and possession of instruments for counterfeiting and forgery (Section 272), forgery, fraudulent alteration and illicit manufacturing of duty stamps, postage stamps, stickers and postmarks (Section 274), forgery and fraudulent alteration of control technical measures for labelling goods (Section 275), establishing, masterminding and supporting a terrorist group or its member (Section 297), illicit manufacturing and possession of nuclear materials, radioactive substances, hazardous chemicals and hazardous biological agents and toxins (Section 298 and 299), plotting against the Slovak Republic (Section 312), terror (Section 313 and 314), destructive actions (Section 315 and 316), sabotage (Section 317), espionage (Section 318), assaulting a public authority (Section 321), assaulting a public official (Section 323), counterfeiting and altering a public instrument, official seal, official seal-off, official emblem and official mark (Section 352), jeopardizing the safety of confidential and restricted information (Section 353), smuggling of migrants (Section 355), endangering peace (Section 417), genocide (Section 418), terrorism and some forms of participation on terrorism (section 419), brutality (Section 425), using prohibited weapons and unlawful warfare (Section 426), plundering in the war area (Section 427), misuse of internationally recognised and national symbols (Section 428), war atrocities (Section 431), persecution of civilians (Section 432), lawlessness in the wartime (Section 433), even if such act was committed outside of the territory of the Slovak Republic by an alien who has not his/her permanent residence on the territory of the Slovak Republic.

Section 6

(1) This Act shall be applied to determine the criminal liability for an act committed outside of the territory of the Slovak Republic by a foreign national who does not have a permanent residency status in the Slovak Republic also where

a) the act gives rise to criminal liability under the legislation effective on the territory where it was committed,

b) the offender was apprehended or arrested on the territory of the Slovak Republic, and

c) was not extradited to a foreign State for criminal prosecution purposes.

(2) However, the offender referred to in paragraph 1 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.

Section 7. Applicability under International Instruments

(1) This Act shall be applied to determine the criminal liability also when it is prescribed by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.

(2) Provisions of Sections 3 through 6 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.

Section 7a. Force for imposing of protective measures

(1) Protective measure pursuant to this act may be imposed if the punishability of the act is considered in connection with which the protective measure has to be imposed.

(2) Provision of the paragraph 1 shall be applied even if the offender of the act, otherwise punishable, is not criminally liable or of a person that cannot be prosecuted or convicted, is concerned.

547. The Slovak Republic stated that there had not been a case in which a corruption-related offence was committed against the Slovak Republic as a State.

(b) Observations on the implementation of the article

548. The reviewing experts noted that the cited provisions do not provide for the provision under review. However, it was provided to the experts during the country visit that all crimes listed in the Criminal Code are also capable of prosecution where the crime is committed against State interests as a whole. Further reference was made to the Act of Protection of Peace, and there is a separate chapter in the Criminal Code, namely Chapter IV on Crimes against Peace, Humanity Terrorism, Extremism and War Crimes.

Article 42 Jurisdiction

Paragraphs 3 and 4

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

549. The Slovak Republic cited section 510 of the Criminal Procedure Code.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 510. Granting of extradition

(1) 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 under Article 509 found that extradition was inadmissible.

(2) If the court found the extradition admissible, the Minister of Justice may decide not to grant extradition if:

- a) there is reasonable ground to believe that the criminal proceedings in the requesting State did not or would not comply with the principles of Articles 3 and 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms or that the prison sentence imposed or anticipated in the requesting State would not be executed in accordance with the requirements of Article 3 of the said Convention,
- b) 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,
- c) taking into account the age and personal circumstances of the person whose extradition is sought, he would most likely be inadequately severely punished by extradition in proportion to the level of gravity of the criminal offence he allegedly committed,
- d) in the case of the criminal offence, for which the extradition is requested, the capital punishment may be imposed in the requesting State, unless the requesting State gives a guarantee to the effect that the capital punishment will not be imposed, or
- e) requesting State requests the extradition in order to execute capital punishment.

(3) If the minister of justice does not allow the extradition to proceed, the ministry of justice shall submit the matter to the General Prosecution Office in order to commence criminal prosecution in compliance with the legal order of the Slovak Republic.

(b) Observations on the implementation of the article

550. Section 510(3) of the Criminal Procedure Code provides that the Minister of Justice where extradition is refused, must submit the matter to the General Prosecutor's Office to commence criminal prosecution.

551. The Governmental officials noted that they could not recollect a case in which the Minister of Justice had not permitted an extradition to proceed and therefore, section 510(3) to that extent had been rendered somewhat obsolete.

Article 42 Jurisdiction

Paragraphs 5 and 6

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

552. The Slovak Republic confirmed that it has implemented the provision under review, and outlined the practical steps involved. If another State party is an EU Member, the Slovak Republic usually requests EUROJUST to coordinate a meeting during which all relevant matters regarding the coordinated investigation are discussed and measures are taken to avoid a duplication of efforts. Usually, an agreement would be made regarding which country will prosecute the case and which court has the jurisdiction to make a final decision. For example, the establishment a joint investigation team may be the most effective measure to successfully conclude an investigation. In other cases, the Slovak authorities would usually request for meetings with the authorities of the other State to have a common understanding on procedural matters.

553. The Slovak criminal legislation allows, *inter alia*:

- For the establishment of a joint investigation team with foreign partners;
- Foreign investigators to examine witnesses and to take other investigative actions provided by the Slovak authorities on the Slovak territory and in accordance with Slovak legislation;
- The freezing, forfeiture and sending abroad of relevant evidence;
- For other investigative measures to be taken at the request of foreign partners (i.e. using of special investigative means);
- For the exchange of relevant information;
- For the use of evidence obtained from abroad.

554. There are also possibilities to offer and provide co-operation with foreign partners in cases where two or more countries are involved in an investigation/ prosecution.

(b) Observations on the implementation of the article

555. The reviewing experts noted the efforts made by the Slovak Republic to cover cooperation with foreign counterparts based on jurisdictional considerations. They also noted the possibility it has to work with States outside of the European Union.

Chapter IV. International cooperation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

556. According to the legal order of the Slovak Republic, as a general rule, an international treaty that has been ratified by the State is binding. Section 478 of the Code of Criminal Procedure stipulates that the provisions of the Code of Criminal Procedure on judicial cooperation in criminal matters, which includes extradition and mutual legal assistance shall be applied unless an international treaty provides otherwise. For the proper application of the provisions of an international treaty, the implementation of such provisions into the national legal order is not strictly necessary, because they can be applied directly.

557. The applicable provisions are sections 478 and 490 of the Code of the Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 478. International treaties

Provisions of this Chapter shall be applied unless an international treaty provides otherwise.

Section 490

(1) If the accused stays abroad and if his extradition is necessary, the presiding judge of the competent court shall issue a warrant of arrest (hereinafter referred to as the “international warrant of arrest”). In the pre-trial, the judge for preparatory proceedings shall issue the international warrant of arrest upon a motion by the prosecutor. The international warrant of arrest has, on the territory of the Slovak Republic, the same effects as a warrant of arrest.

(2) The court shall issue an international warrant of arrest in particular if: a) by residing abroad the accused avoids his criminal prosecution and it is not possible to secure his personal appearance in the criminal proceeding, or b) the sentenced person stays abroad and does not submit himself to the enforcement of the imposed prison sentence despite the fact that he was duly served the order to do so, or if by residing abroad he avoids the enforcement of the final prison sentence or of its remainder.

(3) An international warrant of arrest for the purposes of extradition of an accused shall contain:

- a) the name and surname of the accused, the date a place of his birth, his nationality, his place of permanent residence in the Slovak Republic and other available data facilitating his identification, including his description and photograph, or information on his place of residence abroad,
- b) the legal qualification of the criminal offence with reference to the applicable legal provisions and the description of the facts providing the exact time, place and manner of its commission,
- c) the verbatim wording of the applicable legal provisions including the sanction which can be imposed, as well as the legal provisions relating to prescription, and

- d) if a period longer than three years has passed between the commission of the offence and the issuance of the international warrant of arrest, the description of actions influencing the run of the prescription.
- (4) An international warrant of arrest for the purposes of extradition of a sentenced person shall, in addition to the information referred to in paragraph 3 lit. a/ to c/, contain a) details of the court imposing the sentence and of the sanction imposed, and b) if the judgement was issued in the proceedings against a fugitive from justice or in absentia, information on how the rights of defence of the accused were guaranteed in the proceedings as well as the wording of the provision of Article 495.
- (5) The original or an authenticated copy of the relevant judgement with the finality clause shall be appended to the warrant of arrest under paragraph 4.
- (6) If more than three years lapsed between commission of an offence or final conviction and issuing of the international warrant of arrest, acts directed to criminal prosecution of the person or enforcement of the imposed sentence shall be included in the warrant of arrest or in its separate attachment.
- (7) The international warrant of arrest shall bear the signature of the judge who issued it and the round seal of the court. If in relation to the requested State a translation of the international warrant of arrest into a foreign language is required, the court shall attach to it a translation made by an official translator. If extradition for the enforcement of a sentence is requested, the same shall apply to the translation of the judgement.
- (8) If the surrender of the extradited person shall necessitate his transit through the territory of another State or States, the court shall submit the documents to the Ministry of Justice in the required number of copies and with translations into the required foreign languages.

(b) Observations on the implementation of the article

558. Section 490 of the Code of Criminal Procedure relates to a situation when the Slovak authority seeks the extradition from abroad (i.e. as requesting country). However, subsequent information was provided to the review team on extradition from the position of the Slovak Republic as a requested State in section 510 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 510. Granting of extradition

- (1) 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 under Article 509 found that extradition was inadmissible.
- (2) If the court found the extradition admissible, the Minister of Justice may decide not to grant extradition if:
- a) there is reasonable ground to believe that the criminal proceedings in the requesting State did not or would not comply with the principles of Articles 3 and 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms or that the prison sentence imposed or anticipated in the requesting State would not be executed in accordance with the requirements of Article 3 of the said Convention,
 - b) 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,
 - c) taking into account the age and personal circumstances of the person whose extradition is sought, he would most likely be inadequately severely punished by extradition in proportion to the level of gravity of the criminal offence he allegedly committed,
 - d) in the case of the criminal offence, for which the extradition is requested, the capital punishment may be imposed in the requesting State, unless the requesting State gives a guarantee to the effect that the capital punishment will not be imposed, or
 - e) requesting State requests the extradition in order to execute capital punishment.
- (3) If the minister of justice does not allow the extradition to proceed, the ministry of justice shall submit the matter to the General Prosecution Office in order to commence criminal prosecution in compliance with the legal order of the Slovak Republic.

559. The Slovak Republic highlighted provisions in its Code of Criminal Procedure which constitute grounds for extradition under Slovak law, including the dual criminality requirement (section 479). According to section 499, extradition shall be admissible if the

offence for which extradition is sought constitutes a criminal offence under Slovak law and “is punishable under the same law by a maximum prison sentence of at least one year”.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 479. Reciprocity

(1) If the requesting State is not bound by an international treaty, its request shall only be executed by the Slovak authorities if the requesting State guarantees that it would execute a comparable request submitted by the Slovak authority and it is not a kind of request whose execution in this Chapter is made conditional upon the existence of an international treaty. In case of a request for service of documents to a person on the territory of the Slovak Republic the compliance with the condition contained in the first sentence is not examined.

(2) If the requested State, which is not bound by an international treaty, makes the execution of the request made by the Slovak authority conditional upon reciprocity, the Ministry of Justice of the Slovak Republic may guarantee reciprocity to the requested State for the purposes of execution of a comparable request should it be made by the requested State provided it is a kind of a request whose execution is not made in this Chapter conditional upon the existence of an international treaty.

Section 499. Extraditable offences

(1) Extradition shall be admissible 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.

(2) Extradition for the purposes of the enforcement of a prison sentence imposed for the criminal offence specified in paragraph 1 shall be admissible if the sentence imposed or the remainder to be served is at least 4 months. Several sentences or non-served remainders of several sentences shall be added up.

560. The reviewing experts noted that it appeared that there was not, in relation to international cooperation, a detailed set of statistics outlining how much activity there is in this area on a yearly basis. The Slovak Republic concurred that this area could form the subject of a recommendation in order to improve the present system that is in place for the collation of information regarding international cooperation. Coordination and information sharing between different national authorities could, in particular, form the basis of such a recommendation. It was held that the recommendation should cover at least the setting up of the list of statistical data to be collected, as well as the coordination and information sharing between different national authorities.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

561. The Slovak Republic noted that the provisions of the Convention are directly applicable, pursuant to section 478 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

562. During the country visit, it was confirmed by the Slovak Republic that it had fully implemented the provision under review, due to the primacy of international conventions over domestic law.

563. To date, the Slovak Republic confirmed that UNCAC has not in fact been used as a legal basis for extradition as there has been a preference to use multi-lateral agreements relating to extradition (i.e. European Convention on Extradition) and bilateral agreements are mainly applied in extradition cases with EU non-Member States. This preference is evidenced in the fact that the Slovak Republic is presently negotiating extradition treaties with Australia and Poland. Where this has been absent, the Criminal Code allows for extradition under the principle of reciprocity, outlined in the Criminal Code of Procedure. Failing either of these circumstances, Government officials noted that requests for extradition will be assessed on a case-by-case basis.

564. To date, no specific examples of extradition for corruption-related offences could be provided by the Governmental officials due to the fact that statistical data collected by Ministry of Justice merely includes the number of extradition requests but no specific information on the types of requests.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

565. The applicable provision is section 500 of the Code of the Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 500. Accessory extradition

If the foreign authority requested extradition for several acts at least one of which fulfils the conditions set down in Article 499 paragraph 1, extradition shall also be admissible for criminal prosecution of other criminal offences, or enforcement of prison sentences, for which extradition would otherwise be inadmissible due to insufficient sanction or the remainder of the sentence.

(b) Observations on the implementation of the article

566. The provision under review refers to a situation when the request for extradition includes several separate offences and at least one of which is extraditable but some of them are not. In such a case, the requested State Party may apply section 500 of the Code of Criminal Procedure also in respect of non-extraditable offences.

567. Therefore, when at least one of offences indicated in the extradition request meets the requirements set out in section 499 of the Code of Criminal Procedure, extradition may be granted.

Article 44 Extradition

Paragraphs 4 – 7

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be

concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

568. The Slovak Republic referred to sections 478, 479 and 499 (see above) of the Code of the Criminal Procedure and an example of an extradition treaty: the European Convention on Extradition (Paris, 13.December 1957) 549/1992 Coll.

(b) Observations on the implementation of the article

569. The observations highlighted under paragraph 2 of UNCAC article 44 are applicable.

570. The Slovak Republic stated that it did not have any examples of successful extradition on the basis of UNCAC. This was primarily due to the existence of multi-lateral and bi-lateral treaties which have been used instead, as States are more accustomed to using these as a basis for cooperation. However, it was confirmed that, the Convention could provide a legal basis for extradition between the Slovak Republic and another State party. Due to the primacy of international treaties over the national law, the Convention is directly applicable. It was further noted that UNCAC provided an excellent opportunity going forward for cooperation in the field of extradition between the Slovak Republic and other States, in particular those not in the European Union. The reviewing experts therefore recommended that the Slovak Republic consider informing the UN Secretary-General that it would take this Convention as the legal basis for cooperation on extradition with other States parties.

571. The Slovak Republic noted that no specific data was held in relation to the number of extraditions carried out either by or for the Slovak Republic but it was felt that it was unlikely had been carried out in recent years.

572. The reviewing experts requested information as to the number of extradition requests received and made during recent years. No specific data was provided during the on-site visit but it was felt that the number of requests both made by and received by the Slovak Republic in recent years had been relatively high.

573. During the country visit, the national authorities further noted that the offences established in accordance with this Convention are not regarded as political offences.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

574. The applicable provisions are sections 498, 501 and 514 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 498. Extradition abroad

- (1) The requests by foreign authorities for extradition of a person from the Slovak Republic shall be submitted to the Ministry of Justice.
- (2) The request shall be submitted in writing and shall be supported by
 - a) the original or an authenticated copy of the sentence, warrant of arrest or another order having equal effect,
 - b) a description of the criminal offences for which extradition is requested, including the date and place of their commission and their legal qualification,
 - c) the wording of the applicable legal provisions of the requesting State.
- (3) If the request was not supported by the documents or information specified in paragraph 2 or if the information provided is insufficient, the Ministry of Justice shall request additional information and may impose a deadline for its provision.

Section 501. Inadmissibility of extradition

Extradition shall be inadmissible if:

- a) it concerns a Slovak national, unless the obligation to extradite own nationals is contained in an international treaty or a decision of an international organisation which is binding for the Slovak Republic,
- b) it concerns 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; this is false if concerns the person who requested for an asylum in the Slovak Republic repetitively and his/her request for asylum has already been lawfully decided,
- c) the criminal prosecution or the enforcement of the sentence are prescribed under the law of the Slovak Republic,
- d) the offence, for which the extradition is requested, is a criminal offence only under legal system of the requesting State, but not under legal system of the Slovak Republic,
- e) the criminal offence for which extradition is requested is solely of a political or military nature,
- f) the criminal offence was committed in the territory of the Slovak Republic, unless, due to the specific circumstances of the commission of the offence, priority shall be given to the criminal prosecution in the requesting State, for reasons of establishment of the facts, the degree of punishment or the enforcement of the sentence,
- g) the person has already been finally convicted or released by the Slovak court for the offence, for which the extradition is requested, or
- h) the person whose extradition is requested would not, under the law of the Slovak Republic, be considered criminally responsible at the time of the commission of the offence or there are other factors excluding his criminal responsibility.

Section 514. Additional consent and consent to re-extradition

- (1) The provisions of this Section shall be applicable *mutatis mutandis* to the request by the State of extradition to be given consent to:
- a) prosecute the person for a different offence or to enforce a different prison sentence than the one for which extradition had been granted,
 - b) extradite the person to a third State for criminal prosecution or execution of a sentence.
- (2) The authorities which proceeded on the original extradition request shall have jurisdiction to proceed on the new request.
- (3) The simplified extradition proceedings under Article 503 shall not be admissible.
- (4) The court shall always decide on the admissibility of extradition in a closed hearing. The court acts in the matter together with the defence counsel of the requested person and delivers all documents to him. An appeal against the decision on admissibility of extradition may be lodged by the defence counsel.

(b) Observations on the implementation of the article

575. The Slovak Republic supplemented its response by further referring to sections 498 (see above), 500 (see above), 503 and 510 (see above) of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 503. Simplified extradition proceedings

- (1) The prosecutor shall advise the person whose extradition is sought, during his hearing in the course of the preliminary investigation, of the possibility of simplified extradition proceedings should the person give his consent to extradition, about the consequences of such a consent, and of the possibility to withdraw such a consent as long as the Minister of Justice did not grant extradition.
- (2) If the person whose extradition is sought gives his consent to extradition, the prosecutor shall advise him also of the possibility to waive the application of the rule of speciality and of the consequences of such a waiver.
- (3) If the person whose extradition is sought gives his consent to extradition, the prosecutor in the presence of the person's defence counsel shall record the person's consent to extradition in a protocol as well as the person's statement whether he waives or not, and to what extent, the application of the rule of speciality.
- (4) If the person whose extradition is sought gives his consent to extradition, the prosecutor shall, after the conclusion of the preliminary investigation, submit a motion to the court for the person to be taken into custody pending extradition (Article 506 par. 2) and subsequently submit the case to the Ministry of Justice together with a proposal for a decision. The provision of Article 509 shall not be applied.
- (5) If the person whose extradition is sought withdraws his consent any time prior to the decision by the Minister of Justice, the case shall be submitted after the conclusion of the preliminary investigation to the court for a decision under Article 509.
- (6) Even if the person whose extradition is sought gave his consent to extradition, the Minister of Justice may, before taking his decision on extradition, submit the case to the court for a decision under Article 509.

576. The reviewing experts deemed the Slovak Republic to have legislatively implemented the provision under review.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

577. The Slovak Republic referred to section 503 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

578. Noting the streamlined extradition procedure provided for in article 503 of the Code of Criminal Procedure, the reviewing experts concurred that the provision under review had been legislatively implemented.

579. The experts requested, during the country visit, further information as to the timeline for the extradition process, in practice. The Slovak Republic noted that the time required often depended on the legal system of the country requesting extradition. Where the legal system differed to that of the Slovak Republic, the time taken for extradition to be completed would be significantly longer. It was noted that one of the reasons for the longer extradition process are incomplete extradition requests (i.e. missing information on personal data or the qualification of the criminal offence).

580. Surrender of a person, sought on the basis of a European Arrest Warrant (within the EU), is concluded on average within 3 months. The length of such a procedure will also depend on if there is an agreement or not between the States. However, in relation to requests from jurisdictions such as the United States of America and Australia, the time taken would be much longer, averaging around one year.

581. In relation to the period required for court proceedings, the Slovak Republic noted that this stage of the extradition process could take around one month. This also depends on if this is a regular proceeding held before the Regional Court or elsewhere.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

582. The applicable provision are sections 505 and 506 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 505. Provisional arrest

(1) The presiding judge of the Regional Court shall within 48 hours of the person's surrender decide upon the motion by the prosecutor on the provisional arrest of the detained person. He shall not be bound by the grounds for custody specified in Article 71. Should the presiding judge not place the detained person under provisional arrest within the deadline, he shall order his release.

(2) The Regional Court in whose territory the person resides or is detained shall have jurisdiction in the proceedings under paragraph 1.

(3) The purpose of the provisional arrest is to secure the presence of the arrested person on the territory of the Slovak Republic until the State which has an interest in his extradition, submits the request for his extradition under Article 498.

(4) The provisional arrest may not exceed the period of 40 days from the moment of the person's detention. The presiding judge of a panel of the Regional Court may, upon a motion by the prosecutor conducting the preliminary investigation, decide to release the person from provisional arrest.

(5) If during the course of the provisional arrest the request for extradition by the foreign authorities was submitted, the ministry of justice shall notify to this effect the prosecutor conducting the preliminary investigation. Upon the prosecutor's motion the presiding judge of a panel may place the person in custody pending extradition if the conditions specified in Article 506 paragraph 1 are met.

(6) The release of the person from the provisional arrest shall not preclude his repeated placement in the provisional arrest or his being placed in custody pending extradition.

Section 506. Custody pending extradition

(1) If it is necessary to prevent the escape of the person whose extradition is sought, the presiding judge of a panel of the Regional Court shall place him in custody. He shall rule to this effect upon a motion by the prosecutor conducting the preliminary investigation.

(2) If the person whose extradition is sought gives his consent to extradition or if his extradition was declared admissible, the Regional Court shall place the person in custody pending extradition, unless this had already been done by the presiding judge earlier under paragraph 1.

(3) The presiding judge of a panel of the Regional Court shall order the release of the person from the custody pending extradition as of the day of his surrender to the foreign authorities, at the latest by the 60th day from the decision of the Minister of Justice granting extradition; in the case set out in Article 507 by the 60th day from the commencement of the custody pending extradition at the latest, provided the decision by the Minister of Justice granting extradition was taken before that date. In addition he shall order the release from the custody pending extradition if

- a) the requesting State withdrew its request,
- b) the extradition was declared inadmissible by the Supreme Court or if the Minister of Justice refused to grant extradition,
- c) the grounds for custody, extradition or the surrender ceased for other reasons.

(b) Observations on the implementation of the article

583. In order to ensure the presence of a person whose extradition is sought at the extradition proceedings, the Code of Criminal Procedure provides for measures such as: (1) provisional arrest (section 505) for 40 days; and (2) custody pending extradition (section 506).

584. The reviewing experts noted that there were no other measures in place to implement the provision under review.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

585. The applicable provision is paragraph 3 of section 501 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 510.

(3) If the minister of justice does not allow the extradition to proceed, the ministry of justice shall submit the matter to the General Prosecution Office in order to commence criminal prosecution in compliance with the legal order of the Slovak Republic.

(b) Observations on the implementation of the article

586. According to section 510 of the Code of Criminal Procedure, the *aut dedere aut judicare* principle is fulfilled; in case of refusal to extradite a person upon decision of the Slovak Minister of Justice, the Office of Prosecutor General shall launch a criminal prosecution in with respect to such a person.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

587. The applicable provision is section 495 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 495

- (1) If the requested State granted extradition of a person while making a reservation, such reservation must be honoured.
- (2) If the requested State extradites a person for criminal prosecution in the Slovak Republic under condition that the Slovak authorities allow to execute potential sentence imposed by the Slovak court on the territory of the requested State, ministry of justice cannot in that case refuse to give a consent to transfer under Article 522 para. 1. Provision of the Article 522 para. 2 shall not be used.
- (3) If the extradition of the person was requested or granted for the enforcement of the prison sentence only in respect of some of the several criminal offences for which a concurrent or combined sentence had been imposed, the court in a public hearing shall determine the sentence proportionate to the criminal offences for which extradition was granted.
- (4) If the requested State granted extradition of a person for the enforcement of a prison sentence imposed in a final judgement while making a reservation in respect of the proceedings preceding such a judgement, the court in a public hearing shall hear the extradited person and
 - a) if the extradited person does not object against the enforcement of the imposed sentence, it shall order the enforcement of the judgement, or
 - b) if the extradited person objects against the enforcement, it shall annul the judgement and rule at the same time on custody. If it is necessary to gather further evidence, the court may return the case to the prosecutor for further investigation. Otherwise, the court, after its decision became final, shall continue the criminal proceeding on the basis of the original indictment.
- (5) The court which adjudicated the case in the first instance shall have jurisdiction to conduct the proceedings provided for in paragraph 4.
- (6) An appeal against the decision under paragraph 4 lit. b/ shall be admissible and, with the exception of the ruling on custody, it shall have a postponing effect.

(b) Observations on the implementation of the article

588. The Slovak Republic subsequently referred to paragraph (a) of section 501 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 501

Extradition shall be inadmissible if:

- a) it concerns a Slovak national, unless the obligation to extradite own nationals is contained in an international treaty or a decision of an international organisation which is binding for the Slovak Republic,

589. During the country visit, the reviewing experts asked whether it was possible to extradite an individual to another State subject to specific conditions. The Slovak Republic confirmed that this was possible under domestic legislation. For example,

conditional extradition was often granted to countries such as Russia, with the condition that the individual extradited will be returned to the Slovak Republic following completion of their sentence. Such conditions will be imposed under section 549 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 549. Temporary surrender of detained person from abroad for execution of procedural acts

(1) If in the criminal proceedings in the Slovak Republic the personal appearance of a person other than the accused is necessary for evidentiary purposes and such person is in custody or serving a prison sentence abroad, the prosecutor or the judge may request the Ministry of Justice to arrange the temporary surrender of the person to the territory of the Slovak Republic. The motion submitted to the Ministry of Justice shall specify the procedural acts for which the presence of the person is necessary as well as the date or the period of time for which the personal appearance shall be arranged.

(2) If the requested State authorised the temporary surrender to the territory of the Slovak Republic, the presiding judge of a panel, or in the pre-trial upon the motion by the prosecutor judge for pre-trial proceedings, shall decide that during the period of the temporary surrender in the Slovak Republic such person shall be held in custody. In this resolution shall be specified that the custody shall commence on the day of the surrender of the person to the territory of the Slovak Republic.

(3) The provisions of the paragraphs 1 and 2 shall be applied *mutatis mutandis* to the surrender of a person from abroad to participate in an act of legal assistance carried out in the territory of the Slovak Republic upon a request by the foreign authorities.

590. In cases where the Slovak Republic is requesting extradition of an individual to its own territory, sections 511 and 545 of the Code of Criminal Procedure apply. The review team was of the view that this sufficiently implements the provision under review.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 511. Postponement of surrender or temporary surrender

(1) If the presence of the person whose extradition is sought is necessary in the Slovak Republic for the purposes of termination of the criminal prosecution or the enforcement of the prison sentence for criminal offences other than those which are the object of the extradition request, the Minister of Justice may, after granting extradition, postpone the surrender of the person to the requesting State.

(2) The Minister of Justice may authorise a temporary surrender of the person to the requesting State for the purpose of carrying out necessary procedural acts. The temporary surrender may be repeated.

(3) The provisions of Articles 545 paragraph 2 lit. b/ to d/, 546 paragraph 2 and 547 shall be applied *mutatis mutandis* to the cases of temporary surrender.

(4) If during the temporary surrender the person was sentenced in the territory of the requesting State by a final judgement for the criminal offence for which extradition was granted, the Minister of Justice may decide, upon a request by the requesting State, to postpone the return of the person to the territory of the Slovak Republic until the person will have terminated serving the imposed prison sentence in the territory of the requesting State. Such decision may not be taken if the criminal prosecution in the Slovak Republic was not effectively terminated.

(5) The time the person spent in custody during the temporary surrender abroad shall be counted against the length of the sentence carried out in the territory of the Slovak Republic to the extent in which it had not been counted against the length of the sentence carried out in the territory of the requesting State. The time spent serving the sentence imposed in the requesting State shall not be counted against the length of the sentence carried out in the Slovak Republic.

Section 545. Temporary surrender of detained person abroad

(1) At the request of a foreign authority a person in custody or serving a prison sentence in the Slovak Republic may be temporarily surrendered abroad for the purposes of giving evidence.

(2) The person specified in paragraph 1 may be temporarily surrendered only if:

a) he is not the accused in the proceedings abroad and he consents with the temporary surrender,
b) his absence does not alter the purpose of the custody or the enforcement of the sentence carried out in the Slovak Republic

c) the temporary surrender does not inadequately extend the length of custody in the Slovak Republic, or the temporary surrender does not extend the length of the prison sentence served in the Slovak Republic.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

591. The applicable provisions are sections 510 to 520 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 512. Concurrent extradition requests

- (1) If several States submitted their requests for the extradition of the same person to the Slovak authorities, the conditions of admissibility shall be established in respect of each of the States separately.
- (2) If the court decided that extradition was admissible to several States, or if the person whose extradition is sought gave his consent to extradition to several States, the Minister of Justice when granting the extradition shall decide also to which State the person shall be surrendered first.

Section 513. Waiver of enforcement of remainder of sentence

- (1) The Minister of Justice may waive the enforcement of the prison sentence or its remainder when he grants extradition of a sentenced person. If subsequently the extradition is not effected, the court shall rule that the sentence or its remainder shall be enforced.
- (2) An appeal against the decision of the court under paragraph 1 shall be admissible.

Section 514. Additional consent and consent to re-extradition

- (1) The provisions of this Section shall be applicable *mutatis mutandis* to the request by the State of extradition to be given consent to:
 - a) prosecute the person for a different offence or to enforce a different prison sentence than the one for which extradition had been granted,
 - b) extradite the person to a third State for criminal prosecution or execution of a sentence.
- (2) The authorities which proceeded on the original extradition request shall have jurisdiction to proceed on the new request.
- (3) The simplified extradition proceedings under Article 503 shall not be admissible.
- (4) The court shall always decide on the admissibility of extradition in a closed hearing. The court acts in the matter together with the defence counsel of the requested person and delivers all documents to him. An appeal against the decision on admissibility of extradition may be lodged by the defence counsel.

CHAPTER THREE. Enforcement of decision in relation to other Countries

Division One. Recognition and enforcement of foreign decisions

Section 515. Foreign decision

- (1) A decision of a court of a foreign State in a criminal matter (hereinafter referred to as a „foreign decision“) has legal effects on the territory of the Slovak Republic only if there is a provision in an international treaty or in a law to that effect. The foreign decision imposing a sentence may be enforced on the territory of the Slovak Republic only if it was recognised by the Slovak court.
- (2) A foreign decision may be recognised in a sentence by which
 - a) the guilt was established, but the imposition of a sanction was suspended,
 - b) a prison sentence or a suspended sentence were imposed,
 - c) a fine or a disqualification were imposed,
 - d) a suspended sentence or a fine were transformed into a prison sentence, or
 - e) the confiscation of property or of its part or the forfeiture or confiscation of a thing were imposed if they are on the territory of the Slovak Republic (hereinafter referred to as “a foreign property decision”).
- (3) A foreign decision changing an already recognised foreign decision in the establishment of guilt, has effects on the territory of the Slovak Republic without the need for any further recognition.

(4) In relation to a legal entity a foreign decision may be enforced on the territory of the Slovak Republic only if a financial sanction or confiscation of a property was imposed to it. The enforcement of such foreign decision towards the legal entity is realised without the recognition of the decision by the Slovak court, if it is established by a separate law or an international treaty.

Section 516. Conditions for recognition

(1) A foreign decision shall be recognised in the Slovak Republic if:

- a) an international treaty includes a possibility or an obligation to recognise or enforce an foreign decision,
- b) it is final in the State of conviction or if there is no possibility to lodge an ordinary remedy against it,
- c) the act for which the penalty was imposed, is a criminal offence under both legal systems, that of the State of conviction and that of Slovak Republic,
- d) the decision was made in proceedings which comply with the principles contained in Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms,
- e) the person was not sentenced for a criminal offence which is exclusively of a political or military nature,
- f) the enforcement of the sentence is not prescribed under the law of the Slovak Republic,
- g) the person had not already been sentenced for the same act by the Slovak court,
- h) no decision of another State in respect of the same person for the same act had been recognised in the Slovak Republic, and
- i) the recognition is not contrary to the interests protected by section 481.

(2) If the reason for the proceedings on recognition is the procedure under second and third subsection of this chapter, the withdrawal by the convicted person at any stage of the proceedings of the consent with extradition is not an obstacle to recognition of the foreign decision, in cases where such consent is required, or if one of the other conditions of the procedure under second or third chapter lapsed. The section 519 para. 4 shall be used *mutatis mutandis* for the effects of that recognised decision.

Section 517. Conversion of sanction

(1) A foreign decision shall be recognised by the Slovak court by converting the sanction imposed therein into a sanction which the court would have imposed if it had proceeded on the committed criminal offence itself. The Slovak court must not, however, impose a more severe sanction than the one imposed in the foreign decision, nor may convert it into a different kind of sanction.

(2) If the length and type of the prison sentence imposed in the recognised foreign decision are compatible with the law of the Slovak Republic, the court in its decision on recognition shall decide that the enforcement of the sentence imposed in the foreign decision shall be continued without the conversion referred to in paragraph 1. This procedure shall, however, not be admissible if the court recognised the foreign decision only in respect of some of the several offences for which the foreign decision was imposed.

(3) In its decision on the recognition of a foreign property decision, the Slovak court shall also decide who shall receive the title to the confiscated property, its part or to a thing. If it does not rule otherwise, the title to the property, its part or to a thing shall fall to the Slovak Republic.

Section 518. Procedure for recognition

(1) The motion for recognition of a foreign decision shall be submitted by the Ministry of Justice to the court which shall decide in a closed hearing after obtaining a written statement from the prosecutor.

(2) The Regional Court in whose district the sentenced person has his residence shall have jurisdiction to proceed under paragraph 1. If the sentenced person does not have his residence in the Slovak Republic, the Regional Court in Bratislava shall have jurisdiction. If the subject of the proceeding is a foreign property decision, the Regional Court in whose territory the property or the thing to which the foreign decision relates are located shall have jurisdiction.

(3) The Regional Court shall decide by a judgement which shall subsequently be served on the sentenced person, the prosecutor and the Ministry of Justice.

(4) An appeal against the judgement on recognition of a foreign decision by the sentenced, the prosecutor or the Minister of Justice shall be admissible. The appellate court in a closed hearing shall reject the appeal, if it finds it unsubstantiated. If it does not reject the appeal, it shall revoke the appealed decision and after taking additional evidence, if necessary, it shall itself decide by a judgement, whether the foreign decision shall be recognised or not.

(5) When the judgment on recognition of foreign decision becomes final, the regional court shall immediately return to the ministry of justice the judgment together with the attachments of its proposal, the request of the foreign authority and its attachments, and it shall send to General Prosecution Office all

information about the convicted person, which is necessary in order to make an entry into the Criminal Register.

Section 519. Effects of recognised foreign decision

- (1) The recognised foreign decision shall have the same legal effects as a judgement of a Slovak court.
- (2) If the foreign decision contains sentences in respect of several persons, the recognition shall have effects only in relation to the sentenced person in respect of which the motion for recognition was made.
- (3) If the recognised foreign decision relates only to an individual act of a continuous criminal offence committed in the territory of another State, the recognised foreign decision shall not be an obstacle to the criminal prosecution of the sentenced person for other individual acts of the continuous criminal offence which were committed in the territory of the Slovak Republic.
- (4) If the convicted person revoked his consent with extradition for enforcement of the penalty after recognition of the foreign decision, and if such a consent is required for the procedure under the second or the third division of this chapter, or if the transfer did not take place due to other reason, the recognised foreign decision may be enforced on the territory of the Slovak Republic, only if the convicted person did not serve in full the imprisonment sentence in the State of conviction, or in case he was released on probation only if the State of conviction asks for enforcement of the rest of imposed penalty because the convicted person did not prove himself while on probation.

Section 520. Custody

- (1) If it is necessary for the purposes of securing the enforcement of a foreign decision, the court having jurisdiction under Article 518 paragraph 2 may, anytime between the submission of the motion for recognition of a foreign decision and the writ of enforcement of the recognised foreign decision, order custody for the person who was sentenced by the foreign decision to a prison sentence and who is in the territory of the Slovak Republic; the court shall not be bound by the grounds for custody specified in Article 71.
- (2) An appeal against the decision on custody shall be admissible, but it shall have no postponing effect.

(b) Observations on the implementation of the article

592. The legislation of the Slovak Republic (sections 515 – 520 of the Code of Criminal Procedure) as well as with due consideration to its treaty basis (i.e. Convention on the Transfer of Sentenced Persons of 1983) provide for legal grounds to enforce a sentence imposed by a foreign country in the Slovak Republic.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

593. The applicable provisions are sections 2 and 34 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 2. Fundamental Rules of Criminal Procedure

- (1) No person may be prosecuted as accused on other than the legal grounds and in other manner than that provided for under the present Act.
- (2) 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.
- (3) Unless this Act provides otherwise, any interference with fundamental rights and freedoms under this Act before the commencement of the criminal prosecution or in pre-trial proceedings shall be decided by a

judge for pre-trial proceedings; the judge for pre-trial proceedings shall also decide on other matters as provided for by this Act.

(4) Any person subject to criminal prosecution shall be presumed innocent until proven guilty by a final sentencing judgment.

(5) A prosecutor represents the State in criminal proceedings. Unless this Act, an international treaty promulgated in a manner prescribed by law (hereinafter referred to as “international treaty”) or the decision of an international organization which is binding on the Slovak Republic provides otherwise, the prosecutor shall have the duty to prosecute all criminal offences that came to his knowledge.

(6) Unless this Act provides otherwise, the bodies involved in criminal proceedings and the courts shall act ex officio. They shall have the duty to deal with the cases involving detention as a matter of priority and without undue delay. The bodies involved in criminal proceedings or the courts shall not take account of the petitions whose content infringes on the fulfilment of this duty.

(7) Every person shall have the right to a fair hearing of his criminal case by an independent and impartial tribunal in reasonable time and in his presence, and to have an opportunity to comment on any adduced evidence, unless this Act provides otherwise.

(8) No person may be prosecuted in respect of an act for which he had already been finally convicted or from which he had been acquitted. This principle shall not exclude the use of extraordinary remedies as prescribed by law.

(9) Every person subject to criminal prosecution shall have the right to defence.

(10) 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.

(11) The court may also take other evidence than those proposed by the parties. The parties shall have the right to supply the evidence proposed by them.

(12) The 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.

(13) All the bodies involved in criminal proceedings shall co-operate with associations of citizens and shall make use of the educational impact thereof.

(14) All parties shall have equal status before the court.

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

(16) 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.

(17) 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 under the present Act. The judgment shall always be announced in open court.

(18) Proceedings before the court shall be oral; exceptions are provided for under this Act. The examination of evidence shall be carried out by the court which, however, leaves the examination of the accused, witnesses and expert witnesses to the parties, starting with the one that proposed or procured the evidence.

(19) When deciding at the main trial, open or closed court hearing, the court may only take account of the evidence taken during the hearing, unless otherwise provided by law.

(20) If the accused, his legal guardian, the injured party, a participating person or witness declares that he does not speak the language of the proceedings, he shall have the right to be assigned an interpreter or a translator.

Section 34. Rights and Obligations of the Accused

(1) The accused, from the commencement of the proceedings held against him, shall have the right to give his opinion on any allegation of his guilt and the supporting evidence without, however, having the obligation to testify. He may state the circumstances, move, give and obtain evidence for his defence, file motions and petitions and apply for legal remedies. He shall have the right to elect and consult a counsel also in the course of procedures carried out by the bodies involved in criminal proceedings or by the court. The accused, however, shall not have the right to consult his counsel on how to respond to question raised during the interrogation. He may ask to be interrogated in the presence of his counsel and to have the counsel present also when other procedures of pre-trial proceedings are conducted. If he is apprehended,

remanded in custody or serves an imprisonment sentence, he may speak with his counsel in the absence of a third person; this shall not apply to a telephone call of the accused with his counsel during serving custody, the conditions and mode whereof are set forth under a separate regulation. In the proceedings held before the court, the accused shall have the right to examine witnesses who were moved by him or upon his consent by his counsel, and put questions to the witnesses. The accused may exercise his rights on his own or via his counsel.

(2) The accused may, as early as at the beginning of the proceedings before the first-instance court, give all evidence known to him that he moved to be produced. If, after filing an indictment, the accused files a motion to produce evidence before the commencement of the proceedings before the first-instance court, the court shall be obliged to forthwith serve such motion on the prosecutor and the injured party.

(3) The accused who cannot afford to pay the defence costs shall have the right to a free counsel or to the defence for a reduced legal fee; the accused shall have to prove the entitlement for a free counsel or to the defence for a reduced legal fee at the latest when taking decision about reimbursement of court costs.

(4) The bodies involved in criminal proceedings and the court shall at any moment be obliged to advise the accused of his rights, including the advantage of pleading guilty, and give him a possibility to fully exercise his rights.

(5) The accused shall be obliged, at the beginning of the first examination, to give his address for service of process, including personal service, as well as to specify the mode of service of process, and he shall have to forthwith notify the relevant authority of any change in the address or in the mode of service of process; the body involved in criminal proceedings or the court shall advise the accused of service of process and the related consequences.

Section 37

(3) The accused must also have a defence counsel in proceedings for extradition to a foreign State and in proceedings when a decision is made on the imposition of protective treatment, with the exception of treatment for alcoholism or drug addiction.

Section 502

(3) In proceedings on extradition to a foreign State, the requested person must have a defence counsel.

(4) The public prosecutor shall interrogate the requested person and familiarise them with the contents of the request for their extradition. They shall serve them a copy of the request and the convicting judgment, the international arrest warrant, or another order that makes the basis for the request.

Section 509

(4) A complaint against the decision of the County Court, by which the admissibility of the extradition was pronounced, by the public prosecutor, and the requested person, is admissible only for some of the reasons for the inadmissibility of the extradition under Section 501; the complaint has a suspensive effect. Only the public prosecutor is entitled to file a complaint against the decision by which the inadmissibility of the extradition was pronounced; the complaint has a suspensive effect.

(b) Observations on the implementation of the article

594. Sections 2, 34, 37 and 502 of the Code of Criminal Procedure provide that the person undergoing the extradition proceedings is guaranteed fair treatment (i.e. legal aid, assistance of an interpreter, a defense counsel).

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

595. The applicable provision is section 2 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

596. Subsequently, the Slovak Republic further referred to section 510(2), in particular subsection (b) of the Code of Criminal Procedure; namely, “If the court found the extradition admissible, the Minister of Justice may decide not to grant extradition 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 review team was of the view that this sufficiently implements the provision under review.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

597. The applicable provision is section 501 of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

598. During the country visit, the national authorities confirmed that an extradition request would not be refused on the sole ground that the offence also involved fiscal matters. The review team was of the view that this sufficiently implements the provision under review.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

599. The Slovak Republic noted that it had partially implemented the provision under review, and cited section 502 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 502. Preliminary investigation

(1) Preliminary investigation shall be conducted by the prosecutor of a regional prosecution office, to whom the ministry of justice forwarded the request by a foreign authority for extradition abroad, or in whose district the person to be extradited to the requesting State was arrested or lives. If the preliminary investigation was opened before delivery of the request for extradition the prosecutor informs about it immediately the ministry of justice.

(2) The goal of a preliminary investigation is to determine whether conditions for the admissibility of extradition are met.

(3) During the extradition proceedings the person whose extradition is sought shall be represented by a defence counsel.

(4) The prosecutor shall hear the person and inform him about the content of the extradition request. He shall serve on the person a copy of the request and the sentence, the international warrant of arrest or any other order on which the request is based.

(5) If the person whose extradition is sought was placed in provisional arrest or in custody pending extradition, his contacts with his defence counsel and attorney, the correspondence in custody and visits in custody shall be governed mutatis mutandis by the regulations relating to the enforcement of custody.

(b) Observations on the implementation of the article

600. Subsequently, the Slovak Republic further referred to section 498, in particular subsection 3 of the Code of Criminal Procedure. The review team was of the view that this sufficiently implements the provision under review.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 498. Extradition abroad

3) If the request was not supported by the documents or information specified in paragraph 2 or if the information provided is insufficient, the Ministry of Justice shall request additional information and may impose a deadline for its provision.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

601. The Slovak Republic confirmed that it had concluded numerous bilateral and multilateral agreements relating to extradition, providing a full list of those treaties presently in place. Furthermore, during the country visit, the Slovak Republic also noted that two further bilateral extradition treaties were presently being negotiated with Australia and Poland.

(b) Observations on the implementation of the article

602. As noted under paragraph 2 of UNCAC article 44, there is a preference in the Slovak Republic to use specific extradition treaties as a basis, despite the hierarchy of legal norms (and that UNCAC, in theory, could be used as a legal basis). Some additional bilateral agreements regulating also extradition are highlighted below. It was provided that the provisions of these bilateral treaties replaced the European Convention on Extradition of (Paris, 13.12.1957) and extradition between European Union Member States is based on the European Arrest Warrant proceedings.

- Convention on extradition and legal assistance in criminal matters concluded between the Czechoslovak Republic and the Kingdom of Belgium (Brussels, 19.07.1927, decree no 79/1928 Coll.);
- Treaty between Czechoslovakia and PLR for legal assistance and the settlement of legal relations in civil, family, work) and criminal matters (Warsaw, 21 12th 1987, decree. No. 42/1989 Coll.);

- Treaty between Czechoslovakia and the USSR on legal assistance and legal relations in civil, criminal and family (12th Moscow 8th 1982, decree No. 95/1983 Coll.);
- Treaty between the Czechoslovak Republic and the United Kingdom of Great Britain and Ireland for the mutual extradition (London, 11. 11. 1924, decree no 211/1926 Coll.) - Extension of Canada (Decree no. 56/1929 Coll.);
- Treaty between the Czechoslovak Socialist Republic and the Socialist Federative Republic of Yugoslavia on Regulation of Legal Relations in Civil, Family and Criminal Matters (Belgrade, 20 January 1964), decree No. 207/1964 Coll.;
- Treaty between the Czechoslovak Socialist Republic and Republic of Italy on Legal Assistance in Civil and Criminal Matters (6 December 1985), decree No. 508/1990 Coll.;
- Treaty between Czechoslovak Socialist Republic and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters (Athens, 22 October 1980), decree No. 102/1983 Coll.;
- Treaty between the Czechoslovak Republic and the Republic of Portugal on extradition and legal assistance in criminal matters (Lisbon, 23rd 11th, 1927, decree. No. 24/1931 Coll.).

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

603. The applicable provisions are sections 522 and 523 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 522. Transfer of sentenced person from abroad to serve prison sentence

- (1) The Ministry of Justice shall have the authority to decide, on the basis of an international treaty, on the transfer of a sentenced person to the territory of the Slovak Republic to serve the prison sentence imposed by a foreign decision, upon a request by the sentencing State or by the sentenced person.
- (2) The Ministry of Justice may give its consent to the transfer of the sentenced person or itself request the transfer from the sentencing State only if the foreign decision has been recognised under Subsection One of this Section.
- (3) These provisions shall be applied mutatis mutandis also to the transfer of the sentenced person to the enforcement of the prison sentence imposed by a foreign authority in cases where the sentenced is located in the territory of the Slovak Republic.

Section 523. Transfer of sentenced person abroad to serve prison sentence

- (1) The Ministry of Justice shall have the authority to take the decision, on the basis of an international treaty, to transfer abroad a person sentenced by a Slovak court to a prison sentence.
- (2) Such transfer may be granted upon the motion by the sentenced person, the State of transfer or the court which imposed the sentence in the first instance. If the motion was not made by the competent court, the granting of transfer shall be conditional on the court's agreement.
- (3) When the transfer is allowed, the district court, in the district of which the person serves the imprisonment sentence, shall issue the order to transfer the sentenced person to foreign authorities or the order to transfer the sentenced person abroad.
- (4) The transfer of the sentenced person to serve the sentence in another State shall result in the loss of the jurisdiction of the Slovak authorities to continue the enforcement of the sentence, unless the sentenced person shall return to the Slovak Republic without having served the sentence in the State of transfer in full or without being paroled there. If, after the return of the sentenced person, the enforcement shall be continued, the sentence already served abroad shall be counted against the sentence to be enforced.

(5) With the exception of paragraph 3 these provisions shall be applied mutatis mutandis to the transfer of the enforcement of the prison sentence imposed by a Slovak court to another State if the sentenced is already in the territory of that State.

(b) Observations on the implementation of the article

604. The reviewing experts confirmed that sections 522 and 523 of the Code of Criminal Procedure implement the provision under review, noting also that the Slovak Republic is a State party of the Convention on the Transfer of Sentenced Persons.

During the country visit, following a request for specific examples of international agreements used by the Slovak Republic to transfer sentenced persons, the national authorities provided examples of bilateral treaties below. It was further noted that they are presently attempting to enter into the Inter-American Convention on Serving Criminal Sentences Abroad.

- Treaty between Czechoslovakia and VSR on legal assistance in civil and criminal matters (Prague, 12 10th 1982, ed. No. 98/1984 Coll.);
- Treaty between Czechoslovak Socialist Republic and Slovakia on legal assistance in civil, criminal and family Matters (Damascus, 18 4th 1984, ed. No. 8/1986 Coll.);
- Treaty between the Czechoslovak Republic and the United States on the mutual extradition (Prague, 2nd 7th, 1925, ed. È.48/1926 Coll.).

605. It was further noted by the Slovak Republic that the transfer of sentenced persons was not possible on the basis of the principle of reciprocity provided for in the Code of Criminal Procedure and that in order to carry out this act of transfer, it was necessary to have an explicit agreement in place.

606. A recent case of a transfer of a Romanian prisoner was cited as a practical example of the implementation of this provision. Moreover, the lack of statistics, as highlighted in paragraph 1 of UNCAC article 44 on international cooperation is also applicable to UNCAC article 45.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

607. The applicable provision is section 531 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 531. Definition of the matter

Procedural acts carried out after the commencement of the criminal proceedings in the Slovak Republic in the territory of another State on the basis of a request by the Slovak authorities or such acts carried out in the territory of the Slovak Republic on the basis of a request by foreign authorities, in particular service of documents, hearing of persons and taking of other evidence, shall be understood as legal assistance.

(b) Observations on the implementation of the article

608. “Definition of the matter” in section 531 of the Code of Criminal Procedure corresponds to any *procedural acts* carried on the territory of the Slovak Republic or by Slovak authorities on the territory of another State. The particular acts include the servicing of documents, hearing of persons and taking of other evidence. Such acts can be conducted as necessary actions under mutual legal assistance (or “MLA”). Moreover, during the country visit, the national authorities confirmed that “in particular service of” means “but not limited to”, in practice.
609. The reviewing experts agreed that the Slovak Republic had broadly implemented MLA successfully, pursuant to section 531 of the Code of Criminal Procedure.
610. The lack of statistics, as highlighted in paragraph 1 of UNCAC article 44 on international cooperation is also applicable to UNCAC article 46.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

611. The applicable provision is section 537 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 537. Manner and form of execution of request

- (1) Slovak authorities shall carry out the legal assistance requested by foreign authorities in the manner provided for in this 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.
- (2) At a request by the foreign authority the assistance may be provided on the basis of the legal provisions of another State, unless the requested procedure is contrary to the interests protected by Article 481.
- (3) In order to execute the letter rogatory under section 539 para. 1 it is required that the act which the letter rogatory concerns is a criminal offence not only under the legal system of the requesting State but also under the legal system of the Slovak Republic.

(b) Observations on the implementation of the article

612. The provision under review appears to have been legislatively implemented by section 537 of Code of Criminal Procedure, described as “Manner and form of execution of request”. Paragraph 1 provides the basis upon which to carry out legal assistance, pursuant to the Code of Criminal Procedure or an international treaty. In the case of legal assistance where the procedure is provided for under an international treaty, which is not regulated by the Code of Criminal Procedure, the Prosecutor is to decide how the requested action is to proceed. Paragraph 2 protects State interest in cases where the request of another State may impact upon this.
613. The Slovak Republic noted that there was a general system in place for the provision of MLA. Where a request for MLA is received, the Ministry of Justice acts as the central

authority for receipt of the request and such requests are generally executed by local law enforcement authorities, such as the District Prosecutor's Offices supervised by the General Prosecutor's Office or competent courts.

614. The Slovak Republic further noted sections 532, 538 and 540 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 532. Form of transmission of requests

(1) 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.

(2) If an international treaty provides so, the Slovak authorities may transmit their requests abroad through other channels than the ones provided for in paragraph 1. The policeman may transmit the requests abroad solely through the good offices of a prosecutor.

Section 538. Responsibility for execution of requests

(1) Requests of a foreign authority for legal assistance shall be sent to the Ministry of Justice.

(2) 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 prosecutors' offices have territorial jurisdiction, the ministry of justice shall send the request to the General Prosecution for the decision on which prosecution office shall provide for its execution.

(3) If the foreign authority requests that the examination of a person or another act of legal assistance shall be executed by the court by the reason of applicability of the act in the criminal proceedings in requesting State, the prosecutor shall submit the request in that part for execution to the District Court in whose district the requested assistance shall be carried out. If the exclusive subject of the request is the act, which has to be executed by a court, the request shall be sent to the court directly by the Ministry of Justice.

Section 540. Acts by foreign authorities

(1) Foreign authorities may not execute any acts of legal assistance in the territory Slovak Republic by themselves.

(2) A foreign consular office having jurisdiction for the territory of the Slovak Republic may carry out, if so mandated by the authorities of the State it represents and on their behalf, procedural acts for criminal proceedings only with the prior consent given by the Ministry of Justice. Service of documents on the national of the represented State or the examination of a person who appears voluntarily shall not require any prior consent by the Ministry of Justice.

(3) The presence of representatives of the foreign authorities as well as other persons at the execution of legal assistance by the Slovak authority shall only be possible with the prior consent by the responsible prosecutor; if the request shall be executed by the court, the consent shall be given by this court.

615. Moreover, the Slovak Republic confirmed that they are able to provide MLA in relation to an offence committed by a legal person. No differentiation is drawn between an MLA request in relation to a natural person and a legal person.

Article 46 Mutual legal assistance

Subparagraph 3 (a) to (i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*

- (f) *Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) *Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) *Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) *Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

616. The applicable provision is section 537 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

617. The reviewing experts deemed the provision under review to have been sufficiently implemented by section 537 of the Code of Criminal Procedure.

Article 46 Mutual legal assistance

Subparagraph 3 (j) and (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (j) *Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) *The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

618. The Slovak Republic cited section 551 of the Code of Criminal Procedure, as well as Act No. 650/2005 Coll. on the execution of orders freezing property or evidence in the European Union.

619. The Slovak Republic noted that Act No. 650/2005 had proved to be a cumbersome tool for the provision of MLA and that a new piece of legislation was being developed in order to improve the basis for action in this area.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 551. Seizure of property

(1) Under the conditions specified in an international treaty the court may, on the basis of a request by the foreign authority, and upon a motion by the prosecutor, order the provisional seizure of the movables, immovables, financial assets at the bank account, in a branch of a foreign bank, securities or another property located in the territory of the Slovak Republic, that is intended to be used to commit a criminal offence, was used to commit a criminal offence or is a proceed of crime, and its forfeiture or seizure is expected. Provisions of Section 95 paragraphs 3, 4 and 6, and Section 96 paragraphs 3 and 5 shall be applied *mutatis mutandis*.

(2) The District Court in whose district the property to be seized is located shall have jurisdiction to decide on the motion under paragraph 1.

(3) If the case is urgent, the prosecutor may deliver an order pursuant to the paragraph 1, which has to be approved in 48 hours by the judge competent under paragraph 2, otherwise it shall expire.

(4) The District Court shall revoke the provisional seizure on the basis of a motion of the foreign authority which asked for the provisional seizure, or on the basis of conditions set out in an international treaty. The

District Court may also revoke the provisional seizure if the foreign state in proper time does not ask for execution of foreign property decision concerning the seized property.

(b) Observations on the implementation of the article

620. During the country visit, the reviewing experts were informed that Act No. 650/2005 Coll. is not being used in practice, and that the Council of the European Union is currently preparing a new order on this topic.
621. The reviewing experts noted that UNCAC itself could provide the basis for cooperation in MLA and therefore, if such a basis were applied, the provision under review would be deemed implemented.
622. Additional information was subsequently provided by the Slovak Republic. Namely, the Council Framework Decision 2003/577/JHA of 22 July 2003 on execution in the European Union of orders freezing property or evidence is still a valid legislative Act. This was also enacted into law in the Slovak Republic (Act. 650/2005 Coll. Act on the execution in the European Union of orders freezing property or evidence, amending Act. 300/2005 Coll., Criminal Code Act. and Act No. 301/2005 Coll., Code of Criminal Procedure and the Slovak National Council Act No. 372/1990 Coll. on offences). The Framework Decision and its enactment into law is applicable only to the freezing of property (not confiscation).
623. Framework Decisions, 2003/577/JHA and 2008/978/JHA, as well as various other instruments on mutual legal assistance in criminal matters dealing with the gathering of evidence for proceedings in criminal matters will be replaced by proposal (i.e. direction given) by the European Parliament and Council on the European Investigation Order in Criminal Matters.
624. Proposals made by the European Parliament and European Council on the freezing and confiscation of proceeds of crime in the European Union will replace the Joint Action 98/699 JHA and in part, certain provisions of the Framework Decisions, 2001/500/JHA and 2005/212/JHA (in relation to the Member States participating in its adoption).

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

625. The applicable provisions are sections 482 and 530 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 482. Protection and use of information

(1) The provision of information by the Slovak authorities on their actions taken under this Chapter shall be governed mutatis mutandis by Article 6.

(2) Slovak authorities shall neither make public nor forward information or evidence received from a foreign authority on the basis or in connection with a request received or made under this Chapter, nor shall they use it for purpose other than that for which it was provided or requested if an international treaty contains an obligation to this effect or if the foreign authority provided the information or evidence only under the condition of compliance with such restrictions; this restriction shall not be applied if the foreign authority gives its consent to making the information or evidence public or to using it for a different purpose.

Section 530. Information on exercising of subsidiary jurisdiction

Upon the request by a foreign authority conducting or intending to conduct criminal proceedings in respect of a criminal offence committed abroad, the General Prosecutor's Office shall inform whether the Slovak authorities exercise their jurisdiction to conduct the criminal proceedings in respect of the same offence.

(b) Observations on the implementation of the article

626. The provision under review appears to have been legislatively implemented by sections 482 and 530 of the Code of Criminal Procedure.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

627. The applicable provision is section 482 of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

628. The provision under review appears to have been legislatively implemented by section 482 of the Code of Criminal Procedure, which provides for a wide enough interpretation.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

629. The applicable provision is section 478 of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

630. During the country visit, it was confirmed that the Slovak Republic would not decline to render MLA on the ground of bank secrecy.

631. The provision under review appears to have been implemented by section 478 of the Code of Criminal Procedure.

Article 46 Mutual legal assistance

Subparagraph 9 (a) and (b)

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

632. The applicable provision is sections 479 and 537 (see above) of the Code of Criminal Procedure.

633. The Slovak Republic also cited section 539 which places the request for assistance at the discretion of the Court. In cases where coercive action was involved, it would be unlikely that the Court would agree to such a request.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 539. Authorisation of assistance by court

(1) If under this Code the taking of evidence requested by the foreign authority requires an authorisation by the court, such authorisation shall be given by a judge upon a motion by the prosecutor responsible for the execution of the request.

(2) If the assistance shall be provided on the basis of foreign legal provisions, the judge shall decide upon a motion by the prosecutor whether the foreign procedure does not conflict with the interests protected by the provisions of Article 481. If he does not find such a conflict he shall authorise the provision of the assistance and shall at the same time decide how the evidence shall be taken. An appeal by the prosecutor, with a postponing effect, shall be admissible against the court's decision. The decision of the court on contradiction of procedure under foreign provision is not required if it concerns delivery of a document or instruction of a person under foreign provision.

(3) The District Court in whose district the assistance shall be carried out shall have jurisdiction to decide under the paragraphs 1 and 2.

(b) Observations on the implementation of the article

634. The procedure for extradition is similar to that for MLA, whereby, to date, the Slovak Republic confirmed that UNCAC has not in fact been used as a legal basis for MLA as there has been a preference for using specific extradition treaties as such a basis. This preference is evidenced in the fact that the Slovak Republic is presently negotiating MLA treaties, such as with Australia. Where this has been absent, the Criminal Code allows for MLA under the principle of reciprocity, outlined in the Criminal Code of Procedure. Failing either of these circumstances, Government officials noted that requests for MLA will be assessed on a case-by-case basis.

Article 46 Mutual legal assistance

Paragraphs 10 and 11

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;*
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

635. The applicable provisions are sections 545 to 549 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 545. Temporary surrender of detained person abroad

(1) At the request of a foreign authority a person in custody or serving a prison sentence in the Slovak Republic may be temporarily surrendered abroad for the purposes of giving evidence.

(2) The person specified in paragraph 1 may be temporarily surrendered only if:

- a) he is not the accused in the proceedings abroad and he consents with the temporary surrender,
- b) his absence does not alter the purpose of the custody or the enforcement of the sentence carried out in the Slovak Republic
- c) the temporary surrender does not inadequately extend the length of custody in the Slovak Republic, or the temporary surrender does not extend the length of the prison sentence served in the Slovak Republic.

Section 546

(1) The Minister of Justice shall have the authority to grant the temporary surrender abroad. In his decision he shall set out an appropriate deadline for the return of the person to the territory of the Slovak Republic.

(2) After the temporary surrender was granted, the decision to transfer the person abroad shall be made by the district court in whose district the person is in custody or serving the prison sentence.

Section 547

(1) The time the person spent in custody abroad shall not be counted against the deadlines under Article 76. The decision to this effect shall be taken by the court, and in the pre-trial by the judge upon the motion of the prosecutor.

(2) The time specified in paragraph 1 shall be counted against the length of the sentence served in the Slovak Republic.

(3) An appeal against the decisions under the paragraphs 1 and 2 shall be admissible.

Section 548

Articles 545 to 547 shall be applied mutatis mutandis to the transfer of a person abroad to participate in an act of legal assistance carried out in the territory of another State upon a request by the Slovak authorities.

Section 549. Temporary surrender of detained person from abroad for execution of procedural acts

(1) If in the criminal proceedings in the Slovak Republic the personal appearance of a person other than the accused is necessary for evidentiary purposes and such person is in custody or serving a prison sentence abroad, the prosecutor or the judge may request the Ministry of Justice to arrange the temporary surrender of the person to the territory of the Slovak Republic. The motion submitted to the Ministry of Justice shall specify the procedural acts for which the presence of the person is necessary as well as the date or the period of time for which the personal appearance shall be arranged.

(2) If the requested State authorised the temporary surrender to the territory of the Slovak Republic, the presiding judge of a panel, or in the pre-trial upon the motion by the prosecutor judge for pre-trial proceedings, shall decide that during the period of the temporary surrender in the Slovak Republic such person shall be held in custody. In this resolution shall be specified that the custody shall commence on the day of the surrender of the person to the territory of the Slovak Republic.

(3) The provisions of the paragraphs 1 and 2 shall be applied mutatis mutandis to the surrender of a person from abroad to participate in an act of legal assistance carried out in the territory of the Slovak Republic upon a request by the foreign authorities.

(b) Observations on the implementation of the article

636. The provisions under review were deemed to have been legislatively provided for in the Code of Criminal Procedure dedicated to the “Temporary surrender of detained person abroad”, which are widely described in sections 545, 546, 547 and 548, and also section 549, “Temporary surrender of detained person from abroad for execution of procedural acts”.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

637. The applicable provision is section 537 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

638. The provision under review appears to have been legislatively implemented by section 536 of the Code of Criminal Procedure.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region

or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

639. The applicable provisions are sections 532 and 538 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

640. The provision under review appears to have been legislatively implemented by section 538 of the Code of Criminal Procedure, “Responsibility for execution of requests”, in which all incoming requests must be sent via the Ministry of Justice, with the coordination role of District Prosecutor’s Office; unless there are more Prosecutors’ Offices involved, in which case it would go to the General Prosecutor’s Office. Section 532, “Form of transmission of requests”, focuses on outgoing requests that are to be transmitted through General Prosecutor’s Office, with the exception of Courts’ requests that are sent through the Ministry of Justice. There is the possibility of using other possible channels; however, such a request of police officer should be sent through the competent Prosecutor’s Office.

641. The reviewing experts asked the Slovak Republic to what extent networks such as INTERPOL were used in carrying out their work under this provision of the Convention. The Slovak Republic noted that the Europol network was often used in relation to MLA requests and cited section 484 of the Code of Criminal Procedure, which provides a legal basis for the use of INTERPOL in the transmission and receipt of MLA requests.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 484. Communication through Interpol and SIRENE

(1) Incoming or outgoing requests under this Chapter can also be transmitted through the International Criminal Police Organisation (hereinafter referred to as “INTERPOL”), and if concerns delivery or receiving of requests in relation to States using the Schengen Information System also through the special unit of Police Forces SIRENE.

(2) Information on the dates and other modalities of surrender or transit of persons or things under section 485 may also be exchanged through INTERPOL or the special unit of Police Forces SIRENE.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it

deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

642. The applicable provision is section 533 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 533. Contents and form of request

(1) 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.

(2) The request shall contain the exact specification of the requesting authority, its file number, the date of the request and it shall bear the signature of the responsible officer and the round seal of the requesting authority.

(3) The request and the supporting documents shall be accompanied by a translation into a foreign language done by an official translator if in relation to the requested State such translation is required.

(b) Observations on the implementation of the article

643. The Slovak Republic subsequently referred to section 483 and 532 (see above) of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 483. Commencement of procedure

Slovak authorities may start acting under this Chapter on the basis of a request by a foreign authority which was transmitted by facsimile or other electronic means, if they have no doubt about its authenticity and if the matter is urgent. The original of the request must be submitted subsequently within the deadline imposed by the requested authority, unless that authority waives the requirement to submit the original of the request.

644. The Slovak Republic, in its ratification (C.N.468.2006.TREATIES-17 (Depositary Notification)), stated: *“Pursuant to article 46, paragraphs 13 and 14 of the United Nations Convention against Corruption, the Slovak Republic notifies that the central authority of the Slovak Republic responsible for receiving requests for mutual legal assistance is the Ministry of Justice of the Slovak Republic and the acceptable languages are Slovak and English”*.

645. The Slovak Republic confirmed, during the country visit, that it was possible for MLA requests to be made on an oral basis and acted upon with a written confirmation to follow from the requesting authority.

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

646. The applicable provision is section 533 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

647. During the country visit, the national authorities confirmed that, in practice, the purpose for which the evidence, information or action is sought for by an MLA request would be provided for or received.

648. The reviewing experts deemed the provision under review to have been implemented.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

649. The applicable provision is section 537 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

650. The provision under review appears to have been legislatively implemented by section 537 of the Code of Criminal Procedure.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

651. The applicable provision is section 134 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 134

(1) A witness who cannot appear for examination because of his age, illness, bodily, sensory or mental handicap or because of other serious reasons, may be examined using technical devices for the transmission of sound or images.

(2) The provision of paragraph 1 shall apply, as appropriate, to the witnesses residing abroad who cannot or do not want to appear for examination but are ready to testify, and where the competent authority of the foreign State provides necessary legal assistance.

(3) The provision of paragraph 1 shall apply, as appropriate, also to the examination of endangered witnesses or protected witnesses who are granted assistance under separate legislation. The same procedure shall apply to the witnesses who are to be examined in a different case.

(b) Observations on the implementation of the article

652. The reviewing were of the opinion that the provision under review has been legislatively implemented by section 134 of the Code of Criminal Procedure.

Article 46 Mutual legal assistance

Paragraphs 19 and 20

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

653. The applicable provision is section 482 and 530 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

654. The provision under review appears to have been legislatively implemented by section 482 of the Code of Criminal Procedure.

Article 46 Mutual legal assistance

Subparagraph 21 (a) to (d)

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

655. The grounds for refusal are expressed in sections 481, 537(2) and (3) (see above) of the Code of Criminal Procedure. A request by a foreign authority may also not be executed if the conditions outlined in section 533 (see above) of the Code of Criminal Procedure are not fulfilled.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 481. Protection of the State's interests (Ordre Public)

A request by a foreign authority may not be executed if its execution would be incompatible with the Constitution of the Slovak Republic or a mandatory rule of the law of the Slovak Republic or if by the execution of the request an important protected interest of the Slovak Republic would be violated.

(b) Observations on the implementation of the article

656. The reviewing experts deemed the provision under review to have been legislatively implemented.

Article 46 Mutual legal assistance

Paragraphs 22 and 23

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

657. The applicable provision is section 478 of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

658. During the country visit, the national authorities confirmed that an MLA request would not be refused on the sole ground that the offence also involved fiscal matters.

659. Moreover, section 498 of the Code of Criminal Procedure, in particular sub-section 3, provides that "If the request was not supported by the documents or information specified in paragraph 2 or if the information provided is insufficient, the Ministry of Justice shall request additional information and may impose a deadline for its provision".

660. The Slovak Republic also referred to section 478 on the hierarchy of legal norms, whereby the Code of Criminal Procedure "shall be applied unless an international treaty provides otherwise".

661. The reviewing experts were therefore of the view that these provisions in the Convention have been legislatively implemented.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

662. The applicable provision is section 483 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

663. As regards the timeframe for MLA, where a court hearing is in place in the requesting State, the Slovak Republic requires a 30 day period in order to be able to comply with an MLA request. When an urgent request is received, the Slovak authorities confirmed that they are able to comply with a request within 1-2 months or earlier. However, such a timeframe is considered on a case-by-case basis.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

664. The applicable provision is section 537 (see above) of the Code of Criminal Procedure. The Slovak Republic also cited sections 535 – 539 of the Criminal Code.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 535. Validity of procedural acts

Service effected by a foreign authority upon a request by the Slovak authority as well as evidence taken by such authorities shall be valid if they were carried out in accordance with the law of the requested State or if they comply with the law of the Slovak Republic.

Section 536. Summoning persons from abroad

(1) If the personal appearance of a person who stays abroad is required at a procedural act, he must be served the summons by a request for legal assistance. His appearance must not be compelled by the threat of the use of coercive measures.

(2) The person who appears in the territory of the Slovak Republic on the basis of a summons must not be subjected to criminal prosecution, convicted or restricted in his personal liberty in respect of a criminal offence committed prior to his entering the territory of the Slovak Republic.

(3) Criminal prosecution, conviction or restriction of personal liberty of the summoned person shall, however, be admissible:

a) in respect of the criminal offence for which the person was summoned as accused,

- b) if, after giving evidence, the summoned person remains in the territory of the Slovak Republic for a period of more than 15 days, having had an opportunity to leave,
- c) if the summoned person leaves the territory of the Slovak Republic and returns voluntarily or is lawfully returned to the Slovak Republic from another State.

(b) Observations on the implementation of the article

665. It was noted that, pursuant to section 537(1) of the Code of the Criminal Procedure, the “Slovak authorities shall carry out the legal assistance requested by foreign authorities in the manner provided for in this 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”. Therefore, it might be possible for the prosecutor to postpone an MLA request, as it would interfere with an ongoing investigation, prosecution or judicial proceeding.

666. Moreover, bearing in mind section 478 of the Code of Criminal Procedure (“Provisions of this Chapter shall be applied unless an international treaty provides otherwise”), the reviewing experts deemed the provision under review to have been implemented.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

667. The applicable provision is section 478 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

668. The Slovak Republic in referring to section 478 of the Code of Criminal Procedure, “Provisions of this Chapter shall be applied unless an international treaty provides otherwise”, inferred that the provision under review would directly apply. This was confirmed during the country visit.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or

she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

669. The applicable provision is section 536 (see above) of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

670. The reviewing experts were of the view that section 536 of the Code of Criminal Procedure legislatively implements the provision under review.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

671. The applicable provision is section 488 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 488. Costs

(1) Costs incurred by the Slovak authority in execution of a request by a foreign authority under this Chapter shall be borne by the State and settled by the authority which incurred them.

(2) If an international treaty allows for reimbursement of costs referred to in paragraph 1 or a part of such costs from the requesting State, or in case of an absence of an international treaty, the authority which incurred the costs shall submit to the Ministry of Justice the enumeration of the costs, their justification and its bank account number in order to obtain the reimbursement from the requesting State.

(3) Costs incurred by the foreign authority in connection with a request made by a Slovak authority, the reimbursement of which is claimed by the requested State under an international treaty or due to its absence, shall be borne by the State and settled by the Slovak authority who initiated the request for assistance. Costs incurred by the foreign authority by effecting the transit of a person or a thing from a third State to the Slovak Republic in connection with a request made by a Slovak authority shall be settled by the Ministry of Interior of the Slovak Republic.

(b) Observations on the implementation of the article

672. The provision under review appears to have been legislatively implemented by section 488 of the Code of Criminal Procedure.

Article 46 Mutual legal assistance

Subparagraph 29 (a)

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

673. The applicable provisions are sections 6 and 482(1) of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 6. Public Information on Criminal Proceedings

(1) The bodies involved in criminal proceedings and the court shall inform the public on criminal proceedings under this Act through the mass media. However, such provision of information shall have to be without prejudice to the duty to maintain the confidentiality of classified data, business secrecy, bank secrecy, tax secrecy, postal secrecy or the secrecy of telecommunications.

(2) When providing information, the bodies involved in criminal proceedings and the court shall be entitled not to disclose such facts that could frustrate or obstruct the clearing up and investigation of the case, and not to violate the principle of presumption of innocence. They shall take care not to disclose protected personal information or facts of private nature, in particular those related to family life, dwelling and correspondence that are not directly connected with the criminal act. Special care shall be taken by them to preserve the interests of minors, juveniles and the injured parties whose personal data shall not be disclosed.

(3) At court hearing, the scope of provided information shall be based on the principle of public nature of a trial. During court hearing, the participants may not be prohibited to take handwritten notes or make drawings, unless such activity interferes with the course of the hearing.

(4) Where the provision of information interferes with or endangers the interests referred to in paragraphs 1 or 2, the body involved in criminal proceedings and the court shall refuse to provide the information.

(5) Where the bodies involved in criminal proceedings provide information related to criminal proceedings to the authorities of the Member States of the European Union that are entitled, in compliance with their national legislation concerning the prevention and disclosing of criminal offences, detection of perpetrators of criminal offences and investigation of criminal offences, to execute powers and take coercive measures related to such criminal offences pursuant to separate regulation, the provisions of paragraphs 1, 2 and 4 shall apply accordingly.

Section 482. Protection and use of information

(1) The provision of information by the Slovak authorities on their actions taken under this Chapter shall be governed mutatis mutandis by Article 6.

(b) Observations on the implementation of the article

674. The provision under review appears to have been legislatively implemented by section 482, "Protection and use of information", of the Code of Criminal Procedure that gives delegation to the more detailed section 6, "Public Information on Criminal Proceedings".

675. The reviewing experts asked whether any further information was available as regards the provision of publicly available information to States outside of the European Union. The Slovak Republic confirmed that under the Criminal Code such publicly available information could be transferred on the basis of a request.

Article 46 Mutual legal assistance

Subparagraph 29 (b)

29. The requested State Party:

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

676. The applicable provision is section 6 of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

677. During the country visit, the national authorities informed the reviewing experts that information not generally available to the public would only be capable of being transmitted to another State where such information is to be used for the purpose of a criminal investigation.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

678. Slovak Republic has concluded a few bilateral and multilateral agreements relating to the mutual legal assistance, for example:

- The European Convention on Mutual Legal Assistance in Criminal Matters (Strasbourg, 20 April 1959), 550/1992 Coll.;
- Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), 572/2006 Coll. (“MLA 2000”);
- Treaty between the Czechoslovak Socialist Republic and the Socialist Federative Republic of Yugoslavia on Regulation of Legal Relations in Civil, Family and Criminal Matters (Belgrade, 20 January 1964), 207/1964 Coll.;
- Treaty between the Czechoslovak Socialist Republic and Republic of Italy on Legal Assistance in Civil and Criminal Matters (6 December 1985), 508/1990 Coll.; and
- Treaty between Czechoslovak Socialist Republic and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters (Athens, 22 October 1980), 102/1983 Coll.

(b) Observations on the implementation of the article

679. The Slovak Republic referred to additional treaties:

- Treaty between the Slovak Republic and the Czech Republic on legal assistance provided by the judicial authorities and the treatment of certain legal relations in civil) and criminal matters), with Final Protocol (Prague, 29 October 1992, ozn.è. 193/1993 Coll.);
- Treaty between Czechoslovakia and RLR of legal assistance in civil, criminal and family matters (25th Prague 10th 1958, ed. No. 31/1959 Coll.);

- Treaty between Czechoslovak Socialist Republic and the Republic of Cyprus on legal assistance in civil and criminal matters (Nicosia, 23 4th 1982, ed. No. 96/1983 Coll.); and
- Treaty between Czechoslovakia and the BLR on legal assistance and settlement of legal relations in civil, criminal and family matters (Sofia November 25, 1976, ed. No. 3/1978 Coll.).

680. As had been noted above, in theory, the Slovak Republic could use UNCAC as the legal basis for MLA. However, to date, this has not been done as there has been a preference for using specific extradition treaties for such a basis. Where a specific treaty has been absent, the Criminal Code allows for MLA under the principle of reciprocity, outlined in the Criminal Code of Procedure. Failing either of these circumstances, Government officials noted that requests for MLA will be assessed on a case-by-case basis. Bearing in mind section 478 of the Code of Criminal Procedure (“Provisions of this Chapter shall be applied unless an international treaty provides otherwise”), the reviewing experts recommended that the Slovak Republic consider using UNCAC as the legal basis for MLA. It was noted by the experts that this recommendation was not deemed necessary. If there is no bilateral or multilateral agreement between the Slovak Republic and the State in question, which would regulate the MLA more specifically, the judicial authorities of the Slovak Republic are obliged to use UNCAC as a legal basis. To use UNCAC, however, requires the substantive requirements to first be fulfilled.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

681. The applicable provisions are sections 528 – 530 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 528. Transfer of criminal proceedings from abroad

(1) The Prosecutor General’s Office shall have jurisdiction to take the decision on the request by a foreign authority to take over the criminal proceedings it is conducting. The Prosecutor General’s Office shall inform the ministry of justice accordingly.

(2) If the Prosecutor General’s Office accepts the request under paragraph 1 it shall instruct without delay the competent prosecutor’s office to proceed under the provisions of this Code.

(3) Any procedural act carried out by the authorities of the requesting State in accordance with the law of that State, shall have in the Slovak Republic the same validity as if it had been carried out by the Slovak authorities, provided that its admission does not give this act a greater evidentiary weight than it has in the requesting State.

(4) If the requesting State revokes its request for transfer of criminal proceedings by the reason of continuing the criminal proceedings by itself, Slovak authorities shall lose the jurisdiction to continue in the criminal proceedings.

Section 529. Transfer of criminal proceedings abroad

(1) If the accused in the criminal proceedings carried out in the Slovak Republic is a foreign national or resides in another State, the Slovak authorities may initiate the transfer of the criminal proceedings to that State.

(2) The decision to request the transfer of criminal proceedings abroad shall be taken by the Minister of Justice; in the pre-trial stage s/he decides upon the motion of the Prosecution General Office.

- (3) The transfer of the criminal proceedings abroad may be initiated in particular if
- a) the extradition of the accused from the requested State is not possible, was not granted or if extradition was not requested for another reason,
 - b) it seems effective and opportune to carry out the criminal prosecution in the requested State, in particular for the purposes of finding of facts, degree of punishment or the execution of the sentence,
 - c) if the accused was or shall be extradited to the requested State or if it is likely, for a different reason, that his personal appearance in the criminal proceedings in that State shall be possible,
 - d) the extradition of the person sentenced to a prison sentence by the Slovak court in a final judgement is not possible or was not granted by the requested State and the enforcement of the sentence in that State is not possible.
- (4) After the decision of the requested State to accept the transfer of the criminal proceedings it shall be inadmissible in the territory of the Slovak Republic to continue the criminal prosecution of the accused, or to enforce the sentence imposed for a criminal offence in respect of which criminal proceedings were transferred.
- (5) The Slovak authorities may continue the criminal proceedings or order the enforcement of the sentence, if the requested State:
- a) declares that it shall not proceed in the matter,
 - b) subsequently revokes its decision on the transfer of the criminal proceedings, or
 - c) declares that it shall not continue the proceedings.

Section 530. Information on exercising of subsidiary jurisdiction

Upon the request by a foreign authority conducting or intending to conduct criminal proceedings in respect of a criminal offence committed abroad, the General Prosecutor's Office shall inform whether the Slovak authorities exercise their jurisdiction to conduct the criminal proceedings in respect of the same offence.

(b) Observations on the implementation of the article

The Slovak Republic further confirmed that it is a party to the European Convention on the Transfer of Criminal Proceedings (1972) and under some of the bilateral treaties mentioned under paragraph 30 of UNCAC article 46, the transfer of criminal proceedings is also stipulated. During the country visit, the national authorities confirmed that such transfers had been conducted, but subsequently provided one concrete example. A case provided by the Ministry of Justice, No. 20309/2011/8307-MK relates to the criminal proceedings against a Romanian national for the offence of bribery, according to the Section 333 paragraph 1 and sub-paragraph 2(b) of the Criminal Code. The person was successfully transferred to back to Romania.

682. The reviewing experts were of the view that the provision under review had been legislatively implemented.

Article 48 Law enforcement cooperation

Paragraph 1

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) *The movement of proceeds of crime or property derived from the commission of such offences;*

(iii) *The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

(c) *To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

(d) *To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

(e) *To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

(f) *To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

683. The forms and methods of police co-operation are stipulated in the Schengen Convention itself, as well as in various multi-lateral or bilateral agreements, which already reflect the national specifics of bilateral cooperation between countries. The Slovak Republic in strengthening its cross-border cooperation in combating crime is concluding bilateral agreements on police cooperation with many countries not only in Europe. Specifically in this area, the bilateral agreements with neighboring States, which are governed by institutes over cross-border surveillance and pursuit, enable them to more effectively fight crime. In practice, police cooperation is executed on a more informal basis, through focal points and partner offices, institutions or agencies through the flexible sharing and exchanging of information (i.e. European Partners Against Corruption (“EPAC”)/ European Anti-Corruption Network (“EACN”), EUROPOL, INTERPOL, EUROJUST). Police authorities also use international channels and databases (e.g. Schengen Information System (“SIS”)).

684. The applicable provisions are sections 3, 118 and 551 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 3. Assistance Provided by Public Authorities, Legal Entities and Natural Persons

(1) Public authorities, self-governing higher territorial units, municipalities and other legal entities and natural persons shall have the duty to provide assistance to the bodies involved in criminal proceedings and the courts in the fulfilment of their tasks having relation to criminal proceedings. The State shall reimburse related substantiated material costs incurred by other legal entities and natural persons, unless otherwise provided by a separate regulation. The motions filed to this effect shall be heard and decided pursuant to the provisions of Section 553 paragraphs 4 and 5; they may only be filed by persons who incurred such material costs.

(2) Public authorities, self-governing higher territorial units, municipalities and other legal entities shall have the duty to forthwith notify the bodies involved in criminal proceedings of any fact indicating that a criminal offence has been committed, and to expediently act on the requests from the bodies involved in criminal proceedings and the courts.

(3) The bodies involved in criminal proceedings and the courts shall have the duty of mutual assistance in the fulfillment of their tasks under this Act. The service of documents and information among the bodies involved in criminal proceedings and the courts may be effected by electronic means.

(4) The provisions of paragraphs 1 and 2 shall be without prejudice to the duty to maintain the confidentiality of classified data, business secrecy, bank secrecy, tax secrecy, postal secrecy and the secrecy of telecommunications.

(5) Prior to the commencement of the criminal prosecution or in pre-trial proceedings, a prosecutor and a police officer upon the prior consent given by the prosecutor, and the presiding judge of a panel in the

proceedings before the court, shall have the right to request the data protected by business secrecy, bank secrecy or tax secrecy, or the data from the register of registered securities.

Section 551. Seizure of property

(1) Under the conditions specified in an international treaty the court may, on the basis of a request by the foreign authority, and upon a motion by the prosecutor, order the provisional seizure of the movables, immovables, financial assets at the bank account, in a branch of a foreign bank, securities or another property located in the territory of the Slovak Republic, that is intended to be used to commit a criminal offence, was used to commit a criminal offence or is a proceed of crime, and its forfeiture or seizure is expected. Provisions of Section 95 paragraphs 3, 4 and 6, and Section 96 paragraphs 3 and 5 shall be applied *mutatis mutandis*.

(2) The District Court in whose district the property to be seized is located shall have jurisdiction to decide on the motion under paragraph 1.

(3) If the case is urgent, the prosecutor may deliver an order pursuant to the paragraph 1, which has to be approved in 48 hours by the judge competent under paragraph 2, otherwise it shall expire.

(4) The District Court shall revoke the provisional seizure on the basis of a motion of the foreign authority which asked for the provisional seizure, or on the basis of conditions set out in an international treaty. The District Court may also revoke the provisional seizure if the foreign state in proper time does not ask for execution of foreign property decision concerning the seized property.

(b) Observations on the implementation of the article

685. Like in other European Union countries which follow the Schengen Convention, the Slovak authorities use different channels of law enforcement cooperation. The Slovak Republic is also a member to important regional and international organizations such as EPAC/EACN, EUROPOL and INTERPOL, and uses databases, such as SIS.

686. The reviewing experts requested further information with regards to cooperation with law enforcement agencies outside of the European Union. The Slovak Republic noted that Memoranda of Understanding (“MOUs”) are agreed upon between specific law enforcement agencies in other States, such as with Armenia.

687. During the country visit, the national authorities confirmed that it readily provides law enforcement cooperation on an informal basis. As an example, the experts were informed of a police officer who was passing through the Slovak Republic who requested an informal meeting with the AC Bureau on a money laundering matter. Information was exchanged on an informal basis (i.e. identity, whereabouts and activities of suspected persons), although it was acknowledged that for certain types of information (i.e. details from bank accounts), a more formal system would have to be used. With respect to the movement of proceeds of crime or property derived from the commission of corruption-related offences, or the movement of property, equipment or other instrumentalities used in or intended for use in the commission of such offences, the experts were informed that depending on the asset in question, different procedures would be required (i.e. if the asset was held in a bank, this would require a Court order), but neither the Police nor prosecutors found there to be any obstacles in providing cooperation.

(c) Successes and good practices

688. The experts commended the flexible approach of the Slovak Republic to law enforcement cooperation.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

689. The Slovak Republic provided for the following bilateral agreements as examples:

- Agreement between the Slovak Republic and the Czech Republic on Cooperation in Combating Crime activities to protect public order and protecting the state border (Notification of the Ministry of Foreign Affairs of the Slovak Republic. 35/2005 Coll);
- Agreement between the Slovak Republic and Hungary on cooperation in preventing cross-border crime and the fight against organized crime (Notification of the Ministry of Foreign Affairs of the Slovak Republic. 248/2007 Coll);
- Agreement between the Slovak Republic and the Republic of Poland on cooperation in combating crime and cooperation in border regions (Notification of the Ministry of Foreign Affairs of the Slovak Republic. 638/2006 Coll); and
- Agreement between the Slovak Republic and Austria on police cooperation (Notification of the Ministry of Foreign Affairs of the Slovak Republic. 252/2005 Coll).

(b) Observations on the implementation of the article

690. During the country visit, the national authorities highlighted a number of bilateral agreements that had been signed by the Slovak Republic and its immediate neighbors in order to enhance their ability to cooperate in fighting corruption. Regional agreements and arrangements under highlighted under paragraph 1 of UNCAC article 48. Moreover, pursuant to section 478 of the Code of Criminal Procedure (“Provisions of this Chapter shall be applied unless an international treaty provides otherwise”), allows for the Slovak Republic to use UNCAC as a the basis for mutual law enforcement cooperation in respect of UNCAC-related offences. In practice, the experts were informed that the Slovak Republic predominately considered such cooperation on a case-by-case basis in order to decide which relevant body would be in the best position to provide the assistance required.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

691. The Slovak Republic referred to its explanations in paragraph 1 of UNCAC article 48.

(b) Observations on the implementation of the article

692. The reviewing experts were of the view that, pursuant to the observations provided under paragraph 1 of UNCAC article 48, the provision under review had been implemented.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

693. The applicable provisions are section 10(9) of the Code of Criminal Procedure and article 13 of the MLA Convention of 2000 (No. 572/2006 Coll.).

Code of Criminal Procedure, No. 301, 2005 Coll.
Section 10.

(9) For the purposes of the present Act, a police body shall also mean, within the scope of the authorization to carry out investigation procedures, a representative seconded by a competent authority of other state, the European Union body or a body established jointly by member states of the European Union, who has been assigned to a joint investigation team set up on the basis of an agreement. The joint investigation team may be established in particular where the investigation of a criminal offence requires the complex acts to be executed in another country, or where the investigation is to be carried out by several states, whilst the circumstances of the case necessitate coordinated and concerted action. A head of the joint investigation team shall always be a representative of the body involved in criminal proceedings of the Slovak Republic; other terms and conditions of the joint investigation team operation shall be set forth under the agreement on its establishment. A body authorized to conclude an agreement on the establishment of the joint investigation team shall be the General Prosecutor's Office of the Slovak Republic (hereinafter referred to as the "General Prosecutor's Office") following consultation with the Minister of Justice of the Slovak Republic (hereinafter referred to as the Minister of Justice"). Mutual Legal Assistance Convention adopted and signed by the justice and home affairs ministers the JHA Council on 29-30 May 2000 (572/2006 Coll.)

MLA Convention of 2000 (No. 572/2006 Coll.)

Article 13. Joint investigation teams

1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- (a) a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States;
- (b) a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.

A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:

- (a) the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
 - (b) the team shall carry out its operations in accordance with the law of the Member State in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team.
 - (c) the Member State in which the team operates shall make the necessary organisational arrangements for it to do so.
4. In this Article, members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being "seconded" to the team.
 5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State where the team operates, decide otherwise.
 6. Seconded members of the joint investigation team may, in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Member State of operation and the seconding Member State.
 7. Where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.
 8. Where the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.
 9. A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.
 10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:
 - (a) for the purposes for which the team has been set up;
 - (b) subject to the prior consent of the Member State where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;
 - (c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;
 - (d) for other purposes to the extent that this is agreed between Member States setting up the team.
 11. This Article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.
 12. To the extent that the laws of the Member States concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Member States setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of bodies set up pursuant to the Treaty on European Union. The rights conferred upon the members or seconded members of the team by virtue of this Article shall not apply to these persons unless the agreement expressly states otherwise.

(b) Observations on the implementation of the article

694. The provision under review appears to have been implemented by section 10(9), "Definitions of certain terms – joint investigation team", of the Code of Criminal Procedure and article 13, "Joint investigation teams", of the MLA Convention of 2000.
695. During the country visit, the national authorities confirmed that joint investigations had been carried out (i.e. with Czech Republic).

Article 50 Special investigative techniques

1. *In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

2. *For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

3. *In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

4. *Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

(a) Summary of information relevant to reviewing the implementation of the article

696. The applicable provisions are sections 111, 112, 113, 114, 115, 116, 117 and 544 of the Code of Criminal Procedure.

Code of Criminal Procedure, No. 301, 2005 Coll.

Section 111. Controlled Delivery

(1) Controlled delivery means the monitoring of the movement of the consignment from the sender to the addressee during its transit, export or import, if the circumstances of the case justify the assumption that the consignment without the necessary permits contains narcotic substances, psychotropic substances, precursors, poisons, nuclear or other radioactive materials, hazardous chemical substances, counterfeit or altered money, counterfeit or altered securities, counterfeit, altered or illegally produced custom stamps, postal stamps, labels and postal stamps, electronic means of payment or another payment card or an item capable of such function, firearms or weapons of mass destruction, ammunition and explosives, cultural heritage items or other items that require special permissions for their possession, items intended to commit a criminal offence, or items of a committed criminal offence, for the purpose of apprehending persons who take part in the handling of such consignment.

(2) A warrant for the procedure under Subsection 1 shall be issued by the presiding judge, before the commencement of the criminal prosecution, or in the preliminary hearing by the public prosecutor.

(3) Monitoring of the delivery shall be performed by the Police Force in cooperation with customs administration authorities, which must be notified of such procedure in advance.

(4) The Police Force may commence the monitoring of the consignment without the warrant under Subsection 2 if the item cannot be deferred and the warrant cannot be procured in advance. The Police Force shall notify the public prosecutor of such act without undue delay. If the public prosecutor fails to issue a warrant under Subsection 2 within 48 hours, the monitoring of the consignment must be terminated and the obtained information can no longer be used in further proceedings and must be destroyed in the prescribed manner without undue delay.

(5) During the course of monitoring the consignment, the Police Force may perform the necessary measures to ensure, with the knowledge and control of the customs administration authority, that the consignment or the items replacing it manage to leave the Slovak Republic abroad or vice versa, or from foreign countries through the territory of the Slovak Republic to the third State.

(6) The Police Force shall terminate the monitoring of the consignment through the written order of the public prosecutor, and if it is clear that the handling of the consignment creates a serious danger to life or health, significant damage to assets, or if there is a serious risk that it will not be possible to further monitor such consignment, even without the written order. If necessary, together with the termination of the monitoring of a consignment, the Police Force shall take action against the further detention of items that are

part of the consignment; this shall not apply if the monitored consignment is in transit across the State border and its monitoring will be assumed by the competent authority of another State within international cooperation.

(7) If necessary, the procedure under Subsection 1 shall apply for a means of recording the course of the action.

Section 112. Sham Transfer

(1) A sham transfer means the pretence of purchase, sale or another deliverable transfer method of the subject of the performance, the possession of which requires a special permit, the possession of which is prohibited, originating from a criminal offence or which is intended for the commission of a criminal offence. A sham transfer may be performed in the criminal proceedings for an intentional criminal offence for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, for corruption or another intentional criminal offence the performance of which is bound by an international treaty, if it may be reasonably expected that facts important to the criminal proceedings may be revealed by it.

(2) The presiding judge, before the commencement of the criminal prosecution, or in the preliminary hearing the public prosecutor, shall issue a warrant for a sham transfer in writing.

(3) The sham transfer shall be performed by an authority referred to in Section 110 Subsection 2.

(4) The warrant for the sham transfer may be issued only on the basis of a written request from the police officer or an authority referred to in Subsection 3. The request must be justified by the suspicion of a specific criminal activity and also by the information on the persons and items which the sham transfer concerns, provided such information is known.

(5) The sham transfer may occur without the warrant under Subsection 2 only if the matter cannot be deferred and the written warrant cannot be obtained in advance; an authority referred to in Subsection 3 is however obligated to request the warrant without undue delay. If the warrant is not issued within 48 hours, the authority referred to in Subsection 3 is obligated to terminate the sham transfer. If any information was obtained during such action, it may not be used, and must be destroyed in a prescribed manner without undue delay.

(6) If the recording made during the sham transfer is to be issued as evidence, it shall proceed under Section 115 Subsection 6 accordingly.

(7) If necessary, the procedure under Subsection 1 shall apply for a means of recording the course of the action.

Section 113. Surveillance of Persons and Items

(1) The surveillance of persons and items (hereinafter referred to as “surveillance”) means acquiring information on the movements and activities of persons or the movement of items that is performed in a classified manner; surveillance may be performed in the criminal proceedings on an intentional criminal offence if it can reasonably be assumed that it will reveal facts relevant to the criminal proceedings.

(2) The presiding judge, before the commencement of the criminal prosecution, or in the preliminary hearing the public prosecutor, shall issue a warrant for surveillance in writing.

(3) Surveillance shall be performed by a competent authority of the Police Force. If during the surveillance it is found that the accused communicates with their defence counsel, such information obtained may not be used for the purpose of the criminal proceedings and must be destroyed in a prescribed manner without undue delay; this shall not apply if it is about information which relates to a matter in which the attorney does not represent the accused as their defence counsel.

(4) If it is necessary that the surveillance is performed in other premises or land that are not publicly accessible, or if the technical information resources are to be utilised during the surveillance and the surveillance is not associated with entry into a dwelling, the warrant for the surveillance shall be issued by the presiding judge, before the commencement of the criminal prosecution or in the preliminary hearing, by the judge for preliminary hearing upon the petition of the public prosecutor, if the facts important to the criminal proceedings cannot be obtained otherwise during the performance of surveillance; the warrant shall include the indication of other premises or land that are not publicly accessible where the surveillance is to take place, and the type of technical information resources that are to be used. If the matter cannot be deferred, the judge for the preliminary hearing of the court under which jurisdiction the surveillance is to be performed may issue the warrant instead of the competent judge for the preliminary hearing. Upon entering non-residential premises or land that is not publicly accessible, no action other than that necessary to conduct the surveillance may be performed.

(5) The warrant for the surveillance under Subsection 2 may be issued only on the basis of a written request from a police officer or the competent authority of the Police Force and, in proceedings before the court, upon the written request of the public prosecutor. The request must be justified by the suspicion of the

commission of a specific criminal activity and also by the data on the persons and items to be surveilled, provided such information is known. The warrant must specify the period during which the surveillance shall be performed and this must not be longer than six months. The person who issued the warrant for the surveillance may extend the surveillance period in writing, but by no more than another six months, and they may even do so repeatedly. If the surveillance lasts longer than twelve months, the warrant for the surveillance before the onset of the criminal prosecution and in the preliminary hearing shall be issued by the judge for the preliminary hearing.

(6) A police officer or a competent department of the Police Force is obligated to systematically examine the duration of the reasons that led to the issue of surveillance warrant. If the reasons have expired, the surveillance must be terminated even before the lapse of the time specified in Subsection 5. This fact must be announced to the person who issued the warrant in writing and, in the preliminary hearing, also to the public prosecutor without undue delay.

(7) If the matter cannot be deferred and the written warrant could not be obtained in advance, the surveillance may commence even without a warrant, except in the cases referred to in Subsection 4. A police officer or the competent department of the Police Force is required to additionally request the issue of the warrant without undue delay. If the warrant is not issued within 24 hours, the surveillance must be terminated and the information thus obtained cannot be used and must be destroyed in a prescribed manner without undue delay.

(8) If the record of the surveillance is to be used as evidence, it shall proceed under Section 115 Subsection 6.

(9) In a criminal matter other than one in which surveillance was performed, the record may be used as evidence only if there is a criminal proceeding for an intentional criminal offence in such matter at the same time.

(10) If no facts relevant to the criminal proceedings were found during the surveillance, the record made must be destroyed in the prescribed manner without undue delay.

(11) If necessary, the means of recording of the course of the action and technological surveillance resources may be used in the procedure referred to in Subsection 1.

Section 114. Preparation of Video, Audio or Audiovisual Recordings

(1) In criminal proceedings for an intentional criminal offence, for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, corruption or another intentional criminal offence, the performance of which is bound by an international treaty, a video, audio or audiovisual recording may be prepared if it may be reasonably assumed that facts important to the criminal proceedings will be so revealed.

(2) The order for the preparation of the video, audio or audiovisual recordings shall be issued in writing by the presiding judge, before the onset of the criminal prosecution or in the preliminary hearing, upon the petition of the public prosecutor, by the judge for the preliminary hearing. The petition must be justified by the suspicion of the commission of a specific criminal activity and also information on persons and items that the preparation of the video, audio or audiovisual recordings concerns, if they are known. If it is a matter that cannot be deferred and the preparation of video, audio or audiovisual recordings is not associated with entry into a dwelling and a written warrant from a judge for the preliminary hearing cannot be obtained in advance, the public prosecutor may, before the commencement of the criminal prosecution and in the preliminary hearing, issue the warrant; such a warrant must be confirmed by the judge for the preliminary hearing no later than 24 hours from its issue, otherwise it shall expire and the information obtained cannot be used for the purposes of the criminal proceedings and must be destroyed in a prescribed manner without undue delay. The preparation of video, audio or audiovisual recordings associated with the direct entry into a dwelling is permitted only in criminal proceedings on a crime, corruption, a criminal offence of abuse of authority of a public official, a criminal offence of money laundering or for another intentional criminal offence, the performance of which is bound by an international treaty, and only with the prior consent of the presiding judge, before the onset of the criminal prosecution or in the preliminary hearing, the judge for preliminary hearing.

(3) In an order under Subsection 2, the period during which the preparation of video, audio or audiovisual recordings shall be performed must be determined; this period may be up to six months. The person who issued a warrant for the preparation of the video, audio or audiovisual recordings may extend its duration in writing for no more than two months, and they may even do so repeatedly.

(4) The preparation of video, audio or audiovisual recordings shall be performed by the competent department of the Police Force. If during the preparation of the video, audio or audiovisual recordings it is found that the accused communicates with their defence counsel, information thus obtained may not be used for the purpose of the criminal proceedings and must be destroyed in a prescribed manner without undue delay; this shall not apply if it is about information which relates to a matter in which the attorney does not represent the accused as their defence counsel.

(5) A police officer or a competent department of the Police Force is obligated to systematically examine the duration of the reasons that led to the issue of the warrant for the preparation of the video, audio or audiovisual recordings. If the reasons expired, the preparation of the video, audio or audiovisual recordings must be terminated, even before the lapse of the time specified in Subsection 4. This fact must be announced to the person who issued the warrant in writing and without undue delay, and in the preliminary hearing also to the public prosecutor.

(6) If the video, audio or audiovisual recording is to be used as evidence, it shall proceed under Section 115 Subsection 6 accordingly.

(7) In a criminal matter other than one in which video, audio or audiovisual recordings were prepared, the recording may be used as evidence only if there is a criminal proceeding for an intentional criminal offence in such matter at the same time for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, corruption, a criminal offence of abuse of authority of a public official, a criminal offence of money laundering, or another intentional criminal offence the performance of which is bound by an international treaty.

(8) If no facts relevant to the criminal proceedings were found during the preparation of video, audio or audiovisual recordings, the law enforcement authority or the competent department of the Police Force must destroy such recordings in the prescribed manner without undue delay. The transcript on the destruction of the recordings shall be entered into the file. The authority by whose decision the matter was finally concluded and, in the proceedings before the court, the presiding judge of the court of first instance, shall notify the person referred to in Subsection 2, who does not have the possibility of inspecting the file under this Act, on the destruction of the recordings within three years after the final termination of the criminal prosecution in the given matter; this shall not apply if it is performed on a particularly serious crime or a crime committed by an organised group, criminal group or a terrorist group, or if several persons participated in the commission of the criminal offence and, in relation to at least one, the criminal prosecution was not finally terminated, or if the provision of such information could obstruct the purpose of the criminal proceedings.

Section 115. Interception and recording of telecommunications

(1) Where criminal proceedings are conducted in respect of a felony, corruption, criminal offence of the abuse of power of public official, criminal offence of laundering the proceeds of crime, or in respect of an intentional criminal offence where so provided by a promulgated international treaty, it shall be possible to issue an order to intercept and record telecommunications if there are reasonable grounds to believe that it will reveal the facts that are materially relevant for criminal proceedings. Where, in the course of intercepting and recording telecommunications, the accused is found to be in communication with his defence counsel, no information thus obtained may be used for the purposes of criminal proceedings, and any such information must be forthwith destroyed in a prescribed manner; this shall not apply to information relating to a case in which a lawyer does not represent the accused as his defence counsel.

(2) The order to intercept and record telecommunications shall be issued by the presiding judge of a panel prior to the commencement of criminal prosecution, or by a judge for pre-trial proceedings on a motion from a prosecutor. If the matter bears no delay and a prior order from a judge for pre-trial proceedings cannot be obtained, the order may be issued by a prosecutor before the commencement of criminal prosecution or in pre-trial proceedings, unless the interception and recording of telecommunications involves the entry into the dwelling of a person; such order shall have to be confirmed by a judge for pre-trial proceedings within 24 hours of its issuance; failing that, the order shall become null and void and the information obtained on its basis may not be used for the purposes of criminal proceedings and shall have to be immediately destroyed in a prescribed manner.

(3) The order to intercept and record telecommunications shall have to be in writing and based on circumstantial reasons, separately for each telephone subscriber or technical equipment. The order shall have to specify the telephone subscriber or technical equipment and, if known, the person whose telecommunications are intercepted and recorded, and the length of time during which the interception and recording of telecommunications are to be performed. Interception and recording may not exceed six months. This period may be extended by another two months, also repeatedly, on a motion from a prosecutor or a judge for pre-trial proceedings. Interception and recording of telecommunications operations shall be performed by the competent department of the Police Corps.

(4) Police officers or the competent department of the Police Corps shall be obliged to continuously review the grounds for the order to intercept and record telecommunications. Where such grounds cease to exist, interception and recording of telecommunications shall have to be discontinued, even before the expiry of the time limit referred to in paragraph 3. This fact shall be immediately notified in writing to the entity that issued the order to intercept and record telecommunications; in pre-trial proceedings, it shall also be notified to the prosecutor.

(5) In criminal proceedings conducted in respect of an intentional criminal offence which is different from the one referred to in paragraph 1, the order to intercept and record telecommunications may be issued by the presiding judge of a panel or, prior to the commencement of prosecution or in pre-trial proceedings, by a judge for pre-trial proceedings acting on a motion from a prosecutor, but only with the consent of the subscriber to the telecommunication equipment subjected to interception or recording.

(6) If the record of telecommunications is to be used as evidence, a verbatim transcript made by the officer of the Police Corps carrying out the interception of telecommunications shall have to be attached, wherever the recording makes it possible, containing information about the place, time and legal grounds for interception. A verbatim transcript of the record of telecommunications, which is not secret, signed by the Police Corps officer who drew it up, shall be inserted in the file; if the verbatim transcript of telecommunication records contains a classified fact, it shall be classified according to separate legal provisions. The transcript of telecommunications shall be used as evidence after the interception of telecommunications has been discontinued. In pre-trial proceedings, where the circumstances of the case warrant it, the recording of telecommunications may be submitted to the court even without a transcript of the recording, if the accompanying report gives the data concerning the time, place and legality of interception, and concerning the persons subject to the recording of telecommunications, provided that the recording of telecommunications is intelligible.

(7) The recording may be used as evidence in a different criminal matter from the one that is subject to interception and recording of telecommunications only if such other matter is also heard in simultaneous proceedings concerning a criminal offence referred to in paragraph 1.

(8) If the interception and recording did not produce any facts relevant for criminal proceedings, the criminal procedure authority or the relevant department of the Police Corps shall have to destroy the obtained records forthwith in a prescribed manner. The protocol on the destruction of the recordings shall be inserted in the file. The destruction of the recordings shall be notified to persons referred to in paragraph 3 who do not have the right to view the file; the notification shall be made by the body whose decision has finally settled the matter, or, in the proceedings before the court, by the presiding judge of a panel of a first-instance court within three years from the date on which criminal prosecution in the case was finally concluded; this shall not apply to the proceedings concerning particularly serious felonies or the felonies committed by organised groups, criminal groups or terrorist groups, or criminal offences committed by more than one person if at least one of the perpetrators is still under prosecution, or if the provision of such information could obstruct the purpose of criminal proceedings.

(9) The provisions of paragraphs 1 to 8 shall apply, as appropriate, to the content data or operational data transmitted in real time via computer systems.

Section 116

(1) In criminal proceedings held in respect of an intentional criminal offence, it will be possible to issue an order for the disclosure and provision of telecommunications data that are subject to telecommunications secrecy or enjoy personal data protection, if such data are necessary to clarify the facts relevant for criminal proceedings.

(2) The order to disclose and provide telecommunications data shall be issued in writing by the presiding judge of a panel prior to the commencement of criminal prosecution, or by a judge for pre-trial proceedings on a motion from a prosecutor in pre-trial proceedings, which must be based on circumstantial reasons; the order shall be served on the persons referred to in paragraph 3.

(3) Legal entities or natural persons carrying out telecommunications activities shall notify the presiding judge of a panel, or, in pre-trial proceedings, a prosecutor or a police officer about effected telecommunications.

(4) The provisions of paragraphs 1 to 3 shall apply, as appropriate, to the content data or operational data transmitted in real time via computer systems.

Section 117. Agent

(1) For the purposes of the disclosure, detection or conviction of perpetrators of a felony, corruption, the criminal offence of abuse of authority by a public official, or the criminal offence of laundering the proceeds of crime, it shall be possible to use an agent. The use of agent shall only be allowed if the disclosure, detection or conviction of perpetrators of abovementioned criminal offences and identification of their perpetrators would otherwise be much more difficult and the acquired information gives rise to the suspicion that a criminal offence has been committed or is to be committed.

(2) Agents must act in conformity with the purpose of this Act, and their actions must be proportional to the unlawfulness of the activities they help to detect, identify or prove. Agents may not incite to the commission of crime; this shall not apply to the corruption of public officials or foreign public officials, if the

ascertained facts indicate that the offender would have committed such criminal offence even if no order to use an agent had been issued.

(3) An agent operates under a temporary or a permanent legend or without a legend. The legend of an agent shall consist of a set of cover personal data, in particular data on his identity, family status, education and employment.

(4) If the construction or preservation of a legend make it necessary, cover documents may be produced, altered and used in keeping with the provisions of separate legislation.

(5) The order to use an agent shall be issued by the presiding judge of a panel prior to the commencement of criminal prosecution or, in pre-trial proceedings, by a judge for pre-trial proceedings on a motion from a prosecutor, which must be based on circumstantial reasons.

(6) In cases of emergency, and if the use of an agent does not involve entering the home of another person, the order under paragraph 5 may be provisionally issued even orally by a prosecutor prior to the commencement of criminal prosecution or in pre-trial proceedings. Such order shall have to be confirmed in writing by a judge not later than within 72 hours; otherwise it shall become void. This shall not apply to the procedure pursuant to paragraph 2 where the order to use an agent may be issued only by a judge for pre-trial proceedings.

(7) The warrant issued under paragraphs 5 and 6 shall be in writing and shall specify the time period during which the agent will be used. An agent may be used for a maximum period of six months. This period may be extended by another two months, also repeatedly, by the presiding judge of a panel or, in pre-trial proceedings, by a judge for pre-trial proceedings on a motion from a prosecutor.

(8) Written materials obtained in connection with the use of an agent shall be placed in the file only after a prosecutor has made a motion in the indictment that the evidence be taken on the basis of facts ascertained by the agent.

(9) When acting under a legend, an agent may enter a home with the consent of the entitled person. Such consent, however, may not be obtained on the basis of pretending to have the right of entry.

(10) The true identity of an agent shall have to remain secret even after his assignment has been completed. On a request, the prosecutor or the judge for pre-trial proceedings who have jurisdiction according to paragraphs 5 and 6, and the presiding judge of a panel in the proceedings before the court shall have to be disclosed the real identity of the agent.

(11) A prosecutor may interview an agent in pre-trial proceedings in connection with the facts relevant for criminal proceedings; the prosecutor shall apply, as appropriate, the provisions of Section 134 paragraph 1 to protect the agent's identity; the agent may be exceptionally interviewed by the court which applies, as appropriate, the provisions of Section 134 paragraph 1, Sections 136 and 262 to protect his identity. Court summons shall be served on agents through the Police Corps Presidium. Personal service of summons on agents shall be effected by police officers duly authorised by the President of the Police Corps. In case of agents who are not members of the Police Corps, or who are police officers of another country and agree with the disclosure of their identity, further proceedings shall be governed by the provisions of Sections 127 to 134 on witnesses.

(12) The facts concerning criminal offences which are not related to the case to which the agent has been deployed may be used as evidence in other proceedings only in case of felonies, corruption, abuse of authority by a public official, or the criminal offence of laundering the proceeds of crime.

(13) The procedure referred to in paragraph 1 may involve the use of the means of electronic surveillance. Paragraph 8 shall apply, as appropriate.

(14) Agents may also perform assignments in the territory of other States. Decisions concerning the deployment of agents in other countries shall, with prior consent of the competent authorities of the State in which the agent is to be deployed, be made by the President of the Police Corps in the form of orders referred to in paragraph 5, unless a different procedure is set out in an international treaty. The same procedure shall apply if a foreign national is to be deployed as an agent in the territory of the Slovak Republic.

Section 544. Cross-border observation and pursuit

(1) In accordance with the terms of an international treaty the police authority may, in observing a person, enter the territory of another State and continue the observation of the person even on the territory of that State.

(2) The authorisation to proceed under paragraph 1 shall be issued by the presiding judge or in the pre-trial by the prosecutor.

(3) In the case of urgency, the procedure under paragraph 1 shall be possible also without an authorisation solely on the basis of consent by the Chief of Police or by the person entitled by the the Chief of Police. The authority having jurisdiction to authorise under paragraph 2 shall be informed without delay.

(4) Foreign authorities may carry out the observation in the territory of the Slovak Republic in accordance with the terms of an international treaty. If the international treaty does not specify which Slovak authority has jurisdiction to grant the permission to carry out the cross-border observation in the territory of the Slovak Republic, the permission shall be given by the prosecutor or in urgent cases by the Chief of Police or the person entitled by him/her. The Chief of Police or the person entitled by him/her shall inform about the given permission the competent prosecutor who shall decide on continue the observation.

(b) Observations on the implementation of the article

697. During the country visit, the reviewing experts were informed of an example wherein a male German operative and a female Slovak operative undertook an undercover operation related to corruption-related activities in the Slovak Republic and Germany. This resulted in the subsequent arrest and conviction of several persons in both countries. Special investigative techniques (i.e. telephone interception and covert surveillance) were employed to assist in the gathering of evidence.

698. The reviewing experts were of the view that the provision under review has been implemented.