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SECRÉTARIAT DU COMITÉ DES MINISTRES

Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 28/06/2023

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Meeting: 1475th meeting (September 2023) (DH)

Communication from the applicant (30/05/2023) in the case of Zoltan Varga v. Slovakia (Application No. 58361/12)

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1475e réunion (septembre 2023) (DH)

Communication du requérant (30/05/2023) relative à l'affaire Zoltan Varga c. Slovaquie (requête no. 58361/12)
[anglais uniquement]

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

SKUBLA & PARTNEIR-f

DGJ
30 MAI 2023
SERVICE DE L'EXECUTION DES ARRETS DE LA CEDH

58361/12
58361/12 VflRGO v SVK
25592/16
27176/16
7717A/1A X v SVK
58359/12
58359/12 HASCAK v SVK
67667/16
67887/16 HA8CAX v. 8VK
27787/16

Council of Europe
DGI - Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
F- 67075 Strasbourg Cedex
FRANCE

In Bratislava, 22 May 2023

NOTIFICATION OF MATERIAL FACTS CONCERNING EXECUTION OF THE JUDGMENTS OF THE ECHR OF 20 JULY 2021 IN THE CASE OF ZOLTÀN VARGA V. SLOVAK REPUBLIC AND OF 23 JUNE 2022 IN THE CASE OF JAROSLAV HASCÀK V. SLOVAK REPUBLIC

Applicant 1: **Ing. Zoltàn Varga,** residing at [redacted] born on 21 July 1966, a national of the Slovak Republic

Applicant 2: **Mgr. Jaroslav Hascâk,** residing at [redacted] born on 30 August 1969, a national of the Slovak Republic

Both represented by the law firm **Škubla & Partneri s.r.o.,** with its registered office at Digital Park II, Einsteinova 25, 851 01 Bratislava, CRN: 36 861 154, registered in the Commercial Register of the Bratislava I District Court, Section Sro, Insert No 55759/B, represented by Mgr Martin Škubla, Executive Officer and Advocate

Versus

High Contracting Party: **Slovak Republic**

Esteemed Department for the Execution of Judgments of the ECHR:

Having regard to the obligation of the Slovak Republic to implement individual and general measures necessary for the execution of the judgments of the ECHR, we drew your attention in our previous notifications to certain facts indicating that the Slovak Republic does not fully comply with:

a) Judgment of the ECHR of 20 July 2021 in the case of Zoltân Varga v. Slovak Republic Nos. 58361/12, 27176/16, and 25592/16, which became final on 22 November2021 (the ***'"Judgment Varga")*** and

b) Judgment of the ECHR of 23 June 2022 in the case of Jaroslav Hascâk v Slovak Republic Nos 58359/12, 27787/16, and 67667/16, which became final on 14 November 2022 (the ***"Judgment Hascàk***\ and together with the Judgment Varga as the ***"Judgments").***

After our last submission of 03 March 2023 responding to the notification of the Slovak Republic of 21 December 2022,[1] the Slovak Republic responded by its statement of 31 March 2023 (the ***"Statement).***

In its Statement, the Slovak Republic designated the information provided by the Applicants on 03 March 2023 as incorrect and their interprétation as sélective.

The information provided by the Applicants resulted from the submitted documentation, authors of which are competent public authorities, thus, the Applicants are forced to object to the allégations of the Slovak Republic and refer in this submission to additional facts refuting the allégations of the Slovak Republic specified in the Notification and Statement and repeatedly proving the absence of serious interest of the Slovak Republic to timely and effectively implement measures necessary for the execution of the Judgments

At the same time, with regard to

- The allégations of the Slovak Republic in the Notification and Statement,
- Ignoring official opinions of public authorities, whose legal opinions do not correspond to the allégations of the Slovak Republic,
- The fact that the exercise of the Judgment Varga is pending within the so-called *enhanced procedure* and at the same time it concerns the *leading case* for the Judgment Hascâk,

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[1]) The Slovak Republic designated the notification of 21 December 2022 as *"Information to the execution of the judgement Zoltàn Varga v. Slovakia"* (the *Notification'}*.

- 18 months has elapsed from the final date of the Judgment Varga and 6 months has elapsed from the final date of the Judgment Hascâk, and no outputs of unlawful use of TMGI during the "Gorilla" operation (the ***Outputs of TMGt)*** hâve been destroyed since the Judgments, although according to the national législation they must be destroyed within 24 hours,

the Applicants propose the Committee of Ministers to take measures, including guidelines and/or active interventions of the Committee of Ministers, to ensure the progress in the exercise of both Judgments, official expression of concern about the exercise of the Judgments, or submission of proposais for the exercise of the Judgments. For this purpose, **the Applicants propose that the issue of the exercise of both Judgments is submitted to the next plenary session of the Committee of Ministers of the Council of Europe (1475th DH) to examine the matter with debate and to adopt possible intérim resolutions considering the possibility of initiating *infringement proceedings* pursuant to Art. 46 Sec. 4 of the Convention.**

Although the supervision of the exercise of the Judgment Varga (to which also the Judgment Hascâk relates) was classified under the so-called *enhanced procedure,* the Applicants emphasize that so far not only is there any information on implementing individual and general measures that would aim at the material exercise of the Judgment, but if the Slovak Republic (through its authorities) insists on its existing legal opinions contained in the documentation presented by the Applicants, with which the Slovak Republic did not substantially settled in the Notification and Statement, then it would mean substantial obstacles preventing material exercise of the Judgments

More on the content of the Statement

As to the statement of the Slovak Republic: *"First of ail, in the submission of 21 December 2022, the Government did not daim that the judgments in question had been fully implemented. After ail, the Government did not submit the action report and did not propose to close the supervision of the execution of these judgments by the Committee of Ministers In the mentioned submission, the Government, in accordance with their obligations,* ***only submitted partial information about the current practice, which testifies to the fact that some of the shortcomings identified by the European Court in the judgments in question do not occur in the current practice of the Slovak Intelligence Service and the Régional Court in Bratislava."***

1. Firstly, the Applicants did not claim that the Slovak Republic had stated in the Notification that both Judgments had been *"fully implemented"* [2]

2. Secondly, the Slovak Republic repeatedly daims in the Statement that the general measures specified in the Notification "/n *the current practice"* of the Slovak Intelligence Service (the **"S/S")** and the Régional Court Bratislava (the *RC BA")* removed some of shortcomings identified in the Judgments **The Slovak Republic also included the national législation concerning the obligation of the SIS to destroy the outputs of unlawful use of TMGI (i.e., also the Outputs of TMGI) and the obligation of the RC BA to supervise such destruction** in the general measures specified in the third part of the Notification But:

   a) It concerns the national législation, which was already effective at the time of the Judgments, and in connection with this législation, the ECHR stated its **ambiguity, incompleteness and resulting missing mechanisms of effective protection** of the rights of unlawfully eavesdropped persons The wording of the législation concerning the destruction of the outputs of using of TMGI **has not changed** since the Judgments.
   [The Slovak Republic has not responded to this argument in the Statement at ail];

   b) The Slovak Republic has not proven that the national législation is *"in the current practice"* of the SIS and the RC BA applied or that it is applied differently than it was at the time before the Judgments This législation also applies to the Applicants' case, and in their case, which is also a part of the *"current practice"* of the SIS and RC BA, the Outputs of TMGI hâve not been destroyed. Moreover, the Applicants are not aware of any other case, in which the court would designate the use of TMGI by the SIS to be unlawful, and the SIS together with the RC BA would proceed to the destruction of ail outputs of unlawful use of TMGI within 24 hours as directed by the national législation to which the Slovak Republic referred.
   [The Slovak Republic has in no way proven *"the current practice"* of destroyinq outputs of unlawful use of TMGI];

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[2]) In their submission of 03 March 2023, the Applicants stated at the beginning:
"1 The Notification of the Slovak Republie is divided into three parts relating to

(i) Filing applications by the SIS for a judicial approval with using the technical means of gathering intelligence (the "TMGI"),
(ii) Practice of the RC BA concerning granting consents with using the TMGI, and
(iii) Practice of the SIS concerning préservation and disposai of the outputs (materials) from TMGI.

2 Given these three parts, the Slovak Republic concludes the Notification by stating that the ***deficiencies complained of in items 156 et seq. of the Judgment Varga hâve already been removed by practice."***

c) As we will point out below, the public authorities interpret the national législation as insufficient **without a possibility to force the SIS to proceed to the destruction of the Outputs of TMGI.** (Moreover, please note that the Ministry of Justice of the Slovak Republic, which organizationally covers the représentative of the Slovak Republic before the ECHR, two days after the Judgment Hascâk publicly declared that *"there is no obligation pronounced for the Slovak Republic to destroy any recordings because the ECHR has no such powei*[3]*).*

[The Slovak Republic has not responded to legal opinions of public authorities that conflict with the daims of the Slovak Republic in the Notification and the Statement]

3. In order to advance the exercise of the Judgments, the Slovak Republic should

a) **Clearly prove its claimed *"carrent practice"* of the SIS and RC BA in the destruction and active judicial supervision over the destruction of the outputs of unlawful use of TMGI.** It should clearly prove how the provision of Sec. 7(3) of the Privacy Protection Act applies "/n *the carrent practice"* of the SIS and RC BA, according to which *"If the technical-intelligence measure has been used in contravention of this law, no State body or another body of public power is allowed to use the recording obtained in such a way, or any other resuit of the unlawful use of the technical intelligence measure as evidence, or to recognize it as evidence, except for a criminal or disciplinary procedure against the person, who has made the recording illegally or has ordered to make it* ***The recording or another resuit obtained illegally shall be destroyed in the presence of the legitimate judge, authorized to grant the approval, within twenty-four hours from the illégal use of the technical-intelligence measure.***[1]***;***

b) **Explain why this national législation** (which is a part of the general measures to which the Slovak Republic referred in the Notification) **has not yet been applied to the Applicants' case, and if it was not applied due to its ambiguity/incompleteness, why they did not refer in the Notification to the need to amend/supplement it, or why such a change has not yet been initiated.**

c) Why the Slovak Republic refers in the Notification to the legal régulation of the treatment of the outputs of use of TMGI, including their destruction, whereby it gives an impression that **pursuant to the Judgments, it seriously proceeds or will proceed to the destruction of**

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[3]) See item 10 of the applicants' notification of 13 July 2022 and appendix 2 to this notification.

the Outputs of TMGI, but at the same time, it publicly présents daims to the effect that these outputs need not be destroyed pursuant to the Judgments *("there is no obligation pronounced for the Slovak Republic to destroy any recordings because the ECHR has no such powei")*

As to the statement of the Slovak Republic: *"Secondly,* ***individual measures to a certain extent were carried out;*** *as stated in the submitted action plans, other measures and options are subject to* ***assessment by relevant authorities including the Slovak Intelligence Service and the Régional Court in Bratislava,*** *as the* ***situation is factually and legally complex,*** *especially in view of the passage of a* ***considérable period of time*** *between the relevant events".*

4 On this claim, it should first be noted that the législation, which is according to the Slovak Republic a part of the general measures for the exercise of the Judgments, **requires immédiate destruction of the outputs of unlawful use of TMGI by a protocol, and it is irrelevant whether these results are a day, a week, a month or years old.** The same legal régulation of the obligation to immediately destroy unlawfully produced outputs of use of TMGI (Le , Sec 7(3) of the Privacy Protection Act) applied at the time of the so-called "Gorilla" operation (2005-2006) and it applies at présent. Therefore, it has no legal basis to argue that the Outputs of TMGI has not yet been destroyed due to the passage of a considérable period of time

5. The statements of "*relevant authorities",* including the SIS and RC BA do not imply that the problem of destroying the Outputs of TMGI consists in a considérable time lag (whether practical or legal complexity of the case), but in the tact that **these authorities do not consider the preferentially applicable Convention, binding force of the Judgments of the ECHR, nor the national législation, including the Constitution of the Slovak Republic, to be the sufficient legal basis to immediately proceed to the destruction of the Outputs of TMGI.**

6. With regard to items 4 and 5, the Slovak Republic should clearly

   a) **Prove, in what particular aspects of the Applicants' case it sees their factual and legal complexity of the case.** The existence of the Outputs of TMGI conflicts with the Convention, and pursuant to Sec. 7(3) of the Privacy Protection Act, it is necessary to simply destroy the Outputs of TMGI within 24 hours; in this respect, the matter is simple;

   b) **Settle with the daims of the** *"relevant authorities",* including the SIS and RC BA, which do not refer to **practical and legal complexity of the case,** due to which they would need additional

time to destroy the Outputs of TMGI, but **they refer to the fact that the Applicants' claim for the destruction is not given by the législation.**

7. The SIS

a) Does not respond in the long term to the Applicants' repeated requests to ensure the destruction of the Outputs of TMGI and to the calls of the RC BA, which should provide for the destruction;[4]

b) In its statement of 27 January 2022, the SIS stated within the civil court proceedings on an action of the applicant J. Hascâk, by which from the submission of the action in 2014 he has been unsuccessfully requesting the SIS to comply with the obligation to destroy the Outputs of TMGI (the ECHR has already designated the proceedings as ineffective), that "/t ***holds the opinion that the plaintiff seeks the claim, which is not objectively supported by the provisions of substantive law,*** *namely, that it asks that the court imposes the obligations on the défendant, the fulfillment of which by the défendant would resuit in acting contra legem At the défendants opinion, it means that it is not possible to seek this claim by procédural means stipulated in the Civil Proceedings Code because, as it was stated,* ***the substantial claim according to the plaintiff 's wishes does not exist at ail."*** *(appendix 1)*

Please note that the SIS used this claim after the Judgment Varga **has already been two months final and legally binding and the SIS was provably aware of its existence** from

(i) The Applicants requests addressed to the SIS on 08 September 2021, 18 October 2021, and 14 December 2021, and

(ii) The communication with the Attorney General repeatedly forwarding to the SIS the requests for the proper exercise of the Judgment Varga addressed to him;[5]

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[4]) See item 13 of the Applicants' submission of 03 March 2023.

[5]) See item 12 of the Applicants' submission of 13 July 2022 and item 14 of the submission of 09 January 2023. It follows from appendix 9 to the submission of 09 January 2023:

"The General Prosecutor's Office ofthe Slovak Pepublic received your submission of 15 August2022 designated as "Repeated request for performance of the obligations arising from the judgment of the ECHR and notification of new relevant facts".

The content of your submission refers to another judgment of the ECHR of 23 June 2022, which decided on the complaints of Mgr. Jaroslav Hascâk Nos. 58359/12, 27787/16, and 67667/16 and stated an infringement of the right of Mgr Jaroslav Hascâk to protect private life, based on the similar factual circumstances and the same legal argumentation as in the case Zoltân Varga.

Therefore, you hâve repeatedly requested that the law enforcement authorities respect the judgments of the ECHR and proceed to the exercise thereof by immédiate destruction of ail primary and dérivative products of use of TMGI produced on the basis of Warrants 1 through 3 and of which the law enforcement authorities dispose in individual criminal proceedings.

c) **Instead of proceeding to immédiate destruction of the Outputs of TMGI** (as it is imposed by the provision of Sec. 7(3) of the Privacy Protection Act, which is required to be interpreted pursuant to the Convention and Judgments), **shortly after the Judgment Hascék (25 June 2022) the SIS declared for media that it discusses the execution of the Judgments.**[6] The représentative of the Slovak Republic before the ECHR notified the Applicants of these discussions by a letter of 02 March 2023, in which she stated that "The *Ministry of Justice ofthe Slovak Republie notified the authorities concemed of the judgments of the European Court of Human Rights in the cases Zoltân Varga v. Slovak Republic and Hascék v. Slovak Republic.* ***The issue of additional necessary measures within the exercise of the judgments in the cases related to your clients and the form of the measures was repeatedly discussed by the représentatives of the Ministry of Justice of the Slovak Republie and the représentatives of the other authorities concerned at several working meetings.*** *The Ministry of Justice of the Slovak Republic, namely the représentative of the Slovak Republic before the European Court of Human Rights informs in the standard manner specified for this procedure the Committee of Ministers of the Council of Europe, which alone is entitled to*

At the same time, you disagree with dealing with your previous requests by a prosecutor of the Spécial Prosecutor's Office of the General Prosecutor's Office of the Slovak Republie and refer to the obligation of ail public authorities to ensure the exercise of the judgments of the ECHR "ex offo" (even without the request of Mgr. Jaroslav Hascak), pursuant to Art. 46 Sec. 1 of the Convention and Art. 154c of the Constitution of the Slovak Republic.

It is your third submission with the same content, and the previous two submissions of 31 August 2021 and 16 December 2021 hâve been referred to the Director of the Slovak Intelligence Service due to subject-matter jurisdiction, and a copy thereof to a spécial prosecutor of the Spécial Prosecutor's Office in order to identify the criminal matters, which may contain the affected material.

By a letter of the Attorney General of 04 October 2021, file No. IV/1 Spr 497/21/1000-2 and subsequently by a letter of the Head of the Exploration Department of the General Prosecutor's Office of 11 January2022, file No. IV/2 GPt 561/21/1000-3, you were informed about surrendering your submissions with the understanding that neither the applicable Code of Criminal Procedure nor other generally binding legal régulation imply the power of the Attorney General to ensure the destruction of such outputs or to order the procedure pursuant to Sec. 7(3) of Act No. 166/2003 Coll, on Protection of Privacy against the Unauthorized Use of Technical-Intelligence Measures as you repeatedly request in your submissions

The General Prosecutor's Office of the Slovak Republic holds its opinion reported to you in the letter of the Attorney General of 04 October 2021, file No IV/1 Spr 497/21/1000-2 and subsequently by the letter of the Head of the Exploration Department of the General Prosecutor's Office of 11 January 2022, file No. IV/2 GPt 561/21/1000-3, ***and surrenders your repeated submission in the given matter of 15 August 2022 (similarly as the previous submissions of 31 August 2021 and 16 December 2021) to be dealt with by the Slovak Intelligence Service and the Spécial Prosecutor's Office of the General Prosecutor's Office of the Slovak Republic."***

[6]) See item 11 of the Applicants' submission of 13 July 2022.

evaluate sufficiency or insufficiency of the measures, about ail planned and taken measures (which already ***hâve been taken at the national level or a decision on their final form was made at the national level)."*** *(appendix 2).*

The Applicants are not aware of what was the object of discussions, when, with whom they were held, and what conclusions were adopted. The Applicants asked the représentative to answer these questions by a letter of 29 March 2023, to which the représentative **has not responded** *(appendix 3).* The Applicants pointed out in the letter that as it follows from the award of the Constitutional Court of the Slovak Republic, file No. I. ÜS 448/2021 of 10 November 2022, the Applicants are persons **entitled to remedy the conséquences of the infringement of their rights as identified by the ECHR in the Judgments,** and they hâve a legal interest in being informed about general and individual measures, including answers to the raised questions so that they also can inform the Committee of Ministers (see also item 18);

d) **The Constitutional Court stated inactivity of the SIS** by its award, file No III ÜS 611/2022 of 29 March 2023, but it did not provide the Applicants with any legal protection. The subject matter of proceedings conducted before the Constitutional Court were **delays in the proceedings of the RC BA in ensuring the supervision over the SIS in destroying the Outputs of TMGI in the context of the Judgments of the ECHR** *(appendix* 4).

The Constitutional Court stated that even though the supervision of the RC BA over the activities of the SIS consists in the fact that the outputs of unlawful use of TMGI must be destroyed within 24 hours from unlawful use of TMGI in the presence of a judge of the RC BA (pursuant to Sec. 7 of the Privacy Protection Act), the RC BA cannot force the SIS to the destruction - it cannot order such destruction to the SIS.

At the same time, the Constitutional Court stated that the **impossibility of the RC BA to instruct the SIS to destroy the Outputs of TMGI cannot go to the détriment of the Applicants, who are victims of unlawful use of TMGI; the SIS must primarily settle with the exercise of the Judgments of the ECHR in order to remove the persistent illégal situation.**

Although we cannot identify with the conclusion of the Constitutional Court that it is in compliance with the Convention and the Judgments, if the RC BA fails to actively supervise the SIS in destroying the Outputs of TMGI [on what we comment in more detail in item 9b)], **it**

applies that the Constitutional Court concluded that the inactivity in the procedure of the SIS can be identified [7]

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7) From the award, file No III ÚS 611/22 of 29 March 2023, we quote the following relevant parts:

*"9. **Judicial control over the activities of the SIS is adjusted in the Wiretapping Protection Act (Sec. 4 and Sec. 7 of the Act), which consiste in the fact that** (i) TMGI can only be used subject to prior written consent of a judge, (ii) the judge during the use of TMGI constantly examines their reasonableness, (iii) if the reasons for using TMGI hâve ceased to exist, the judge shall forthwith décidé to discontinue their use, (iv) **if TMGI were used unlawfully, a produced recording or other outputs of unlawful use must be destroyed within 24 hours of unlawful use of TMGI in the presence of the judge, and minutes shall be drawn up.***

*10 The recordings and outputs of the use of TMGI are obtained and further maintained by the SIS in its databases, which is entitled to do so pursuant to Sec 10 of the Act on the SIS A prerequisite for a court to exercise efficient control (i) during using TMGI after it has rendered a warrant with their use, and (ii) in the case of their unlawful use, during their destruction, is **necessary coopération of the SIS Without coopération of the SIS with the court, the court is not able to exercise efficient control,** because the entire process of intelligence activities related to the production and maintaining the recordings and other outputs of use of TMGI is performed exclusively by the SIS **In the case of unlawful use of TMGI, the SIS is primarily responsible to ensure the destruction of the recordings and other outputs of unlawful use.** because the SIS is responsible for their gathering and maintaining in its records. Within the judicial control, the court only participâtes in the act of destroying the recordings and other outputs of unlawful use of TMGI.*

11. However, pursuant to the Wiretapping Protection Act, the court is not entitled to order the SIS to destroy unlawful recordings and other outputs The Act does not contain rules adjusting mutual relations between the SIS and the court in the process of destroying unlawful recordings and other outputs of their use From the aspect of the constitutional law, the court is limited by the scope of its powers (Art 2 Sec 2 of the Constitution) This constitutional injonction reinforces the conclusion that the court is not entitled to render any act to the SIS ordering it to destroy unlawful recordings and outputs of their use. In terms of the définition of the position of the court in the control of the SIS in connection with destroying unlawful recordings and other outputs, the court is obliged to file a motion to the SIS to start acting. However, it has no authoritative means to render an order to destroy unlawful recordings and outputs. Finally, neither is the court alone entitled to destroy unlawful recordings - the Act does not entrust such power to it because the recordings under the Act on the SIS are kept by the SIS, and not by the court

*12. **Incompleteness of the control in régulation of legal relations between the court and the SIS in the process of destroying unlawful recordings and outputs of their use must not go to the détriment of the applicants who are the victim of unlawful use of TMGI. Since in the case of both applicants the ECHR pronounced infringement of their right pursuant to Art. 8 (as to applicant 1, by the implémentation of three warrants and préservation ofprimary material from the implémentation of the second warrant and dérivative material from the implémentation of ail warrants, and as to applicant 2, by the implémentation of the first and third warrant and préservation of dérivative material from the implémentation of ail warrants), the SIS is primarily obliged to settle with the exercise of the judgments of the ECHR in order to remedy the unlawful situation.***

*13. The SIS failed to destroy the primary materials from the implémentation of the second warrant and dérivative materials from ail three warrants and stored them pursuant to Sec. 17(6) of the Act on the SIS. According to the judgments of the ECHR, Art 8 of the Convention was breached by preserving the primary and dérivative materials. **It is up to the SIS to settle with this fact and remedy the unlawful situation.** Even though Sec 7(3) ofthe Wiretapping Protection Act does not expressly State whether the destruction of unlawful recordings and other 5 outputs is to mean only primary outputs of use of TMGI (audio recordings and their transcriptions) or also dérivative materials (analyses, notes), **the Act is to be interpreted not only grammatically but to make allowance for the purpose of the Act even in accordance with the judgments of the ECHR. It should be noted that the judgments of the ECHR bind ail branches of power whose task is to act in the manner that national legal situation is brought into line with the obligations under the Convention** (KARPENSTEIN, U , MAYER, F. Konvention zum Schutz der Menschenrechte und Grundfreiheiten Kommentar C H Beck, München 2022, p. 794) **The SIS is also a branch of power in the case of the infringement of the applicants' right pronounced by the ECHR.** (appendix 4).*

8. Based on the previous item, the Slovak Republic should clearly explain to the Committee of Ministers, how the deficiencies in destroying the outputs of unlawful use of TMGI were removed "/n *the current practice"* of the SIS, when it is proven that the SIS has been inactive for a long time

9 As to the RC BA, in whose *"current practice"* certain shortcomings identified in the Judgments should also hâve been removed according to the Slovak Republic, then:

a) In the submission of 03 March 2023, we submitted the statement of the RC BA of 19 December 2022 to the Committee of Ministers, which was filed within the above specified proceedings, file No III ÙS 611/2022, and in which the RC BA stated:

"As regards *the statutory* ***possibilités of the court to intervene in the process of destroying records obtained by unlawful use of the TMGI or any other outputs of unauthorized use of the TMGI, they are significantly limited under the current legal régulation*** *and the court can proceed in relation to the State authority disposing of unlawfully obtained intelligence only with reference to the provision ofSec 7(3), (5) ofAct No 166/2003 Coll*

The current législation does not provide for any procédural instrument, *for instance, in the form of an order or decision, which would order or direct the State authority disposing of outputs of such unauthorized use of the TMGI to destroy such outputs...*

After careful considération of the decisions so far issued and ***respecting the national législation, it is necessary to incline to the opinion that the provision of Sec. 7(3) of Act No. 166/2003 Coll, présumés the destruction of the primary outputs from the use of the TMGI (i.e., records from the use of the TMGI in the form of audio, audio-visual, image records and transcripts of audio records), however, not the dérivative products from the use of the TMGI (e.g., analyses processed on the basis of the information obtained from the use of the TMGI, notes, analyses etc.)."***

[The Slovak Republic has not responded to this legal opinion of the RC BA in the Notification and the Opinion];

b) The Constitutional Court identified with the above cited legal opinion of the RC BA in the award, file No III ÜS 611/2022 of 29 March 2023, when in conflict with the Judgments it stated that the RC BA has no obligation to actively ensure the destruction of the Outputs of TMGI because it is sufficient that it only non bindingly appeals to the SIS to act voluntarily, thus, the Applicants cannot effectively seek the protection of their rights against the RC BA.[7] It is not possible to identify with

this conclusion of the Constitutional Court for the following reasons (which, however, cannot be reviewed before the national authority because the award, file No III ÚS 611/2022 is final):

(i) It is necessary to **distinguish between the obligations of the SIS and of the RC BA.** While the SIS is obliged to destroy the Outputs of TMGI, the RC BA is obliged to **ensure** the destruction (to actively supervise the SIS). If the SIS is unlawfully inactive (which is a part of the executive branch of power), it does not mean that also the RC BA cannot be unlawfully inactive (which is a part of the judicial branch of power and is to ensure the destruction of the outputs of TMGI, to be carried out by the SIS);

(ii) **The RC BA exercises the judicial power** in supervising the SIS **Inactivity in exercising the judicial power of the RC BA can only be eliminated by the Constitutional Court,** which refused to proceed in this way;

(iii) **In two separate decisions, with which also the ECHR dealt** (the decision, file No. III.ÚS 490/2015 of 06 October 2015 and the award, file No. III.ÜS 490/2015 of 02 February 2016), **the Constitutional Court stated that the RC BA is obliged directly by law to provide for the destruction of the Outputs of TMGI (not obliged to *try to ensure* their destruction by appealing to the SIS). The Constitutional Court kept holding this opinion also in the proceedings before the ECHR, to which it claimed the same in the Statement of 09 May 2018.**[8] In addition, we remind you that the RC BA objected in the proceedings before the ECHR that it has no power to ensure the destruction of the Outputs of TMGI, what the

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[8]) The Constitutional Court in

(i) The decision, file No III ÚS 490/2015 of 06 October 2015, stated that *"the Régional Court or a judge of the Régional Court is directly from the Wiretapping Protection Act obliged to immediately décidé on discontinuation of use of TMGI (if it has not already done earlier with respect to the periods arising from Sec. 4(1) and (2) of the Wiretapping Protection Act, note) and ensure that the recordings procured by using such means are destroyed in their presence, and minutes be drawn up on this act in the presence of a public authority '* ,

(ii) The award, file No. III.ÚS 490/2015 of 02 February 2016 stated that " *"After checking the legal conditions for the disposai of outputs and data from the use of TMGI, the Régional Court discontinues the proceedings, and if the recordings still exist, it will ensure drawing up of minutes pursuant to Sec. 7(5) of Act No. 166/2003 Coll. [...] the Régional Court has these obligations directly from the relevant legal régulation*';";

(iii) **The Statement of 09 May 2018** addressed to the ECHR stated that *"After service of that award* [i e , the award, file No. III.ÜS 490/2015 of 02 February 2016], *the relevant Régional Court or a judge of the Régional Court is obliged directly from Act No. 166/2003 Coll, to forthwith décidé on discontinuation of use of technical means for gathering information and ensure that the recordings procured by using those means are destroyed in their presence with the proviso that minutes be drawn up on this act in the presence of a public authority During performing this obligation, the court has access to the data kept in the records of the SIS as it follows from Sec 17(6) of Act No 46/1993 Coll."*

ECHR refused and added that the Constitutional Court cannot only refer to the statutory obligation of the RC BA to ensure the destruction with the proviso that if the RC BA fails to do so, the affected person can repeatedly refer to the Constitutional Court According to the ECHR, a *vicious circle* would be created in such a case, when the affected person would repeatedly refer to the Constitutional Court and it would repeatedly refer to the fact that the RC BA would nevertheless satisfy its obligation. Efficiency of remedies would only be illusive, and fundamental rights of the affected person would not be protected substantially, but only formally [9] Therefore, if the RC BA fails to ensure the destruction of the Outputs of TMGI and the affected person cannot object its inactivity in otherthan constitutional complaint, then the obligation of the Constitutional Court was not only to point out the obligation of the RC BA to ensure the destruction of the Outputs of TMGI but also to order the RC BA to ensure the destruction and definitively break the vicious circle pointed out by the ECHR;

(iv) Although the Constitutional Court in the award, file No. III. ÜS 611/22 stated that

- "***Incompleteness of the control in regulating legal relations*** *between the court and the SIS in the process of destroying unlawful recordings and outputs of the use* ***must not go to the détriment of the Applicants being the victims of unlawful use of TMGI',*** and
- "*If is necessary to interpret the law not only grammatically but also* ***make allowance for the purpose of the law in accordance with the given decisions of the ECHR*** *It should be noted here that the judgments of the ECHR bind ail branches of the power, whose task is to act in such a way as to bring the national legal status into line with the obligations under the Convention",*

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[9]) As the ECHR stated in item 119 of the Judgment Varga:

"To the extent that the Government contended that the applicant could and should hâve pursued the destruction of the primary material resulting from the implémentation of warrant 3 before the Régional Court, in the framework of its supervisory jurisdiction in respect of the surveillance under the warrants it had issued, the Court notes that the Régional Court itself repeatedly denied having any such jurisdiction once the implémentation of the warrants had been terminated (see paragraph 44 above). It did so despite the Constitutional Courts findings in relation to the material resulting from the implémentation of the first two warrants (see paragraph 32 above). In fact, the Régional Court's attitude has been expressed in definitive terms by the destruction of its own files concerning those warrants, together with the third warrant (see paragraphs 17 and 45 above). When the applicant complained of this attitude before the Constitutional Court (see paragraph 46 above), he was referred back to the Régional Court (see paragraph 56 above), and the Government hâve argued that if he is unsuccessful in asserting his rights there, he could then turn to the Constitutional Court again (see paragraph 102 above). The course of action suggested by the Government thus amounts to a ***vicious circle, which is clearly incompatible with the notion of an effective remedy under the Convention."***

it **did not follow its own allégations. Because the obligation to destroy the Outputs of TMGI follows from the Judgments applying the Convention, both the RC BA and the Constitutional Court were obliged to directly apply the Convention and reflect it in the interprétation of the national législation** (including Sec. 7 of the Privacy Protection Act). However, by its argumentation the Constitutional Court turned the Convention into *de facto* impotent legal régulation subordinated to the national législation, which does not explicitly impose on the RC BA the obligation to instruct the SIS to destroy the Outputs of TMGI

[Based on the facts stated in this item, the Slovak Republic should clearly prove the *"current practice"* of the RC BA in applying the legal régulation of the destruction of outputs of unlawful use of TMGI, which the Slovak Republic designated as a part of general measures, and clearly settle with the allégations of the RC BA and the Constitutional Court, which conflict with the *"current practice"* claimed by the Slovak Republic]

As to the statement of the Slovak Republic: *"With regard to some spécifie complaints of the Applicants, it is appropriate to point out that the legislative régulation of a posteriori notification of the surveillance operation to the monitored person was not at ail the subject of assessment by the European Court in the cases in question, as is clear from its judgments, since such a question did not arise in the cases in question at ail.* As *to the reproaches of the Applicants concerning the législation in general, it is necessary to underline that the European Court, while determining the scope of the case, stated in its judgments: "As the présent case involves an allégation of an individual interférence with the applicant's rights, there is no need for the Court to rule in abstracto on the Slovakian législation regulating covert surveillance in the intelligence gathering context. Rather, the Court must confine itself to the circumstances of the case and take into account the nature and extent of the interférence alleged by the applicant " (see Sec 93 of the judgment Zoltân Varga; and Sec 63 of the judgment Hascâk) "*

10 Please note that we hâve referred to the issue of *a posteriori* notification juts in connection with a possibility to effectively seek the removal of unlawful situation, which the Applicants hâve not yet get. In its Statement, the Slovak Republic pointed to the legal régulation (as a part of general measures), which is to prevent the répétition of the situation when no legal protection is provided to persons affected by using of TMGI in the future This legal régulation cannot prevent this unless the affected persons learn about the interférence with their rights. As the Constitutional Court stated in the decision, file No III ÜS 490/2015 of 06 October 2015, also dealt with by the ECHR in the spécifie case of the

Applicants, "/n *connection with the Applicants' objection related to the fact that the SIS has not satisfied its obligation to notify them of discarding and destruction of the recordings and other outputs from use of TMGI, the Constitutional Court States that this public authority* ***has no such an obligation*** *from the Wiretapping Protection Act. On the other hand, it should be noted that unlawful interférence with the right for privacy of natural persons by a public authority should be seen as a serions fact,* ***therefore, it dépends on a legislator to precisely adjust in the législation of the Slovak Republic the terms and conditions for using the TMGI as well as the conditions for such natural person to become acquainted with decisions of the relevant Régional Court on using and termination of using the TMGI.*** *This opinion is also supported by the content of the statement of reasons to the Wiretapping Protection Act, which indicates that the National Council of the Slovak Republic established a separate committee for purposes of continuons examination and évaluation of compliance with the terms and conditions for using the TMGI set by law (to control activities of the SIS), which submits a report on its findings to its plenary session."*

As to the statement of the Slovak Republic: *"Finally, in the submission of21 December2022, the Government did not argue that the* ***Spécial Control Committee of the National Council of the Slovak Republic to control the activity of the Slovak Intelligence Service*** *is an effective mean of remedy in the individuel cases of the Applicants; information was presented that* ***this committee fulfills the rôle ofexternal control of the internai régulations*** *of the Slovak Intelligence Service "*

11. This allégation does not correspond to the fact for the following two reasons.

12. Firstly, *the Spécial Control Committee of the National Council of the Slovak Republic to control the activity of the Slovak Intelligence Service* is not only to control *"internai régulations"* of the SIS but **it is to control the activities of the SIS as such, including satisfaction of ail of its legal obligations** (not only those arising from the *"internai régulations")* [10]

13. Secondly, *the Spécial Control Committee of the National Council of the Slovak Republic to control the activity of the Slovak Intelligence Service* **does not properly perform the external control where it is even legally incontestable that the SIS has unlawfully used TMGI without eliminating**

[10]) Sec. 5(1) of the Act on the SIS:
"Oversight of the activities of the Information Service shall be carried out by the National Council of the Slovak Republie, which shall establish for this purpose a spécial control body (the "control body") comprised of members of the National Council."

conséquences of such breach - i.e., fails to destroy the outputs of use of TMGI. By the complaint of 06 March 2023, the Applicants referred to this committee to carry out the external control of the SIS in ensuring the Judgments of the ECHR *(appendix* 5). The chairman of the committee responded to the complaint on 24 March 2023 in the manner that **following the control, the committee has not identified any breach of legal régulations** (i e , the Convention is also such a régulation) **and stated that the SIS was providing required assistance to the relevant authorities** (the Constitutional Court stated that the SIS is inactive and fails to provide the required assistance). In particular, the committee stated:

"The SCC of the SIS discussed your complaint on the 23rd session held on 23 March 2023 and stated the following:

- *The Slovak Intelligence Service provides the required assistance to the public authorities in connection with the exercise of the judgments of the European Court of Human Rights in the case ofJ HascàkandZ Varga,*
- *Given the statement above and having examined the complaint, no breach of the generally binding legal régulations by the activities of the Slovak Intelligence Service has been identified, and the facts alleged by you hâve not been confirmed "*

As to the statement of the Slovak Republic: *"Regardmg the **alleged inaction of the prosecutor's office and law enforcement authorities,** which the Applicants request to destroy the evidence they hâve in criminal proceedings, it should be recalled that the European Court considered such factual allégations only as **background information** for the purposes of the assessment of original complaints of the Applicants not constituting a separate matter in the framework of the proceedings in issue before the European Court (see Sec. 127 in connection with Sec. 123-124 of the judgment Zoltàn Varga; and Sec. 76 of the judgment Hascâk) In any case, as confirmed by the Annex no 4 of the communication of the Applicants, i e instruction of the prosecutor of the Office of Spécial Prosecution of the General Prosecution of the Slovak Republic of 3 February 2023, the prosecutor gave the investigator a binding **instruction to carry out the necessary actions in the further course of the investigation, specifically actions aimed at establishing the origin and legality of the material in question** contained in the case files of criminal proceedings The Constitutional Court of the Slovak Republic also pointed out the need to verify the origin of the records in Sec. 140 ofits decision file no **I. US 448/2021 to which the legal représentative of the Applicants refers, while interpreting its conclusions in a sélective manner.***

14. It is again necessary to oppose these allégations of the Slovak Republic and submit additional documentation of the Spécial Prosecutor's Office (the ***"SPO)*** and law enforcement authorities (the **"LEA")**refuting the interest of the Slovak Republic to ensure substantive exercise of the Judgments

15. First of ail, we recall that in the previous submissions we informed the Committee of Ministers that the SPO did not feel to be bound by the Judgment of the ECHR and the LEA has not responded to repeated requests to respect the Judgments.[11] To support these facts, the Applicants submitted the relevant correspondence, to which the Slovak Republic has not responded

16. **The substance of the violation of the Convention consists in unlawful use of TMGI resulting in unlawful existence of the Outputs of TMGI. It cannot be derived from any part of either of the Judgments that the holding of the Outputs of TMGI right by and only with the SIS is in conflict with the Convention, however, the existence and use of the Outputs of TMGI held by other authorities is in compliance with the Convention** (notwithstanding that the Outputs of TMGI **cannot be used as evidence and must be destroyed** pursuant to the provision of Sec. 7(3) of the Privacy Protection Act cited in item 3a) above; compare with the statement of the SPO of 30 September 2022: "no *evidence or outputs of the TMGI Action Gorille in the case supervised by myself will not be destroyed, and I will not even instruct such action I will not respond to any other submissions pushing for the destruction of evidence specified byyod*[12]*).*

17 Although the ECHR stated that the criminal proceedings are only a *"background information"* for the needs of its decisions, it is no longer such a *"background information"* if the Slovak Republic on the one side daims that it takes steps to ensure the proper exercise of the Judgments, but on the other hand, the SPO and the LEA ignore the Judgments, ignore the national législation (Sec. 7(3) of the Privacy Protection Act), moreover, as we will prove in items 18 through 25 hereinbelow, **they ask the SIS to ignore them as well and provide them with information, which is about to be destroyed.**

18. As to the award, file No. I. ÙS 448/2021, to which the Slovak Republic refers and which the Applicants allegedly interpret selectively, the Constitutional Court stated that

    a) **Inactivity of the LEA in relation to establishing the origin of the outputs of use of TMGI,** of which they dispose in the spécifie criminal proceedings, **(also) infringed the fundamental**

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11) See items 13 and 15 of the Applicants' submission of 09 January 2023, item 14 of the Applicants' submission of 13 July 2022, items 7 and 8 of the Applicants' submission of 02 May 2022, item 17 of the Applicants' submission of 01 December 2021, and the documentation cited and designated therein and enclosed thereto

12) See item 15 of the Applicants' submission of 09 January 2023 and enclosed appendix 10.

right of the Applicant J. Hascâk to discuss his case within a reasonable time pursuant to Art. 6(1) of the Convention (items 156 through 163 of the award);

b) **If it is discovered that the outputs of use of TMGI, of which the LEA dispose, hâve originated from the activities of the SIS, they must be destroyed pursuant to the Judgments of the ECHR** (items 139[13] and 140[14] of the award);

c) The Applicant J. Hascâk is the person authorized **to establish the origin of the Recordings for the purpose of exercise of the Judgments of the ECHR** (items 141[15], 149[16], and 150[17] of the award).

19. **The award clearly navigates towards the détermination of the origin of the outputs of use of TMGI in the disposai of LEA in order to respect the legally binding Judgments of the ECHR and eliminate interventions in the rights of the Applicant J. Hascâk.** In other words, the Constitutional Court imposes to establish the origin of the outputs of use of TMGI for the purpose of their destruction provided that they hâve originated from the activities of the SIS.

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[13]) *"139. However, in this context it is **necessary to respect the conclusion of the ECHR from the judgment Hascâk** v. **Slovak Republic** that not only the implémentation of the warrants but also the préservation of the dérivative material from the implémentation thereof resulted in the infringement of the applicant's right pursuant to Art. 8 of the Convention (although it follows from the judgment Varga v. Slovak Republic that also by the préservation of the primary material from the implémentation of the third warrant) "*

[14]) *"140. Taking into account the foregoing backgrounds, the Constitutional Court **concludes that if the recordings represent the primary material from the implémentation of warrants 1 and 2, they should hâve been destroyed pursuant to the judgments of the ECHR Varga v. Slovak Republic and Hascâk v. Slovak Republic. However, this requires détermination of origin or vérification of identity or authenticity of the recordings.**"*

[15]) *"141. The Constitutional Court States that **it considers the applicant with reference to the judgment of the ECHR in the case Hascâk v. Slovak Republie as an authorized person (having interest in) the détermination of origin ofthe recordings for the purpose of exercising of the judgment Hascâk v. Slovak Republic, thus, cessation of the infringement of his right to privacy pursuant to Art. 8 of the Convention."***

[16]) *"149. Before assessing this part of the constitutional cornplaint, the Constitutional Court had to first settle with the fact **whether the applicant is a person entitled to seek the protection against infringement of the rights designated by him by the relevant public authorities. In this regard, it took into account the judgment of the ECHR in the case Hascâk v. Slovak Republic and resulting conclusion on infringement ofthe applicant's rights pursuant to Art. 8 of the Convention** due to the implémentation of the warrants and préservation of dérivative materials from the implémentation thereof by the SIS. Taking into account individual circumstances of the negotiated case, in view of the aforementioned, it has granted the applicant **a status of the authorized person** in this part of the constitutional complaint "*

[17]) *"150. Following from the given premises, the Constitutional Court proceeded to the examination of the alleged infringement of the right pursuant to Art. 48 Sec. 2 of the Constitution and Art. 38 Sec. 2 of the decree in association with Art. 6 Sec. 1 of the Convention, even if a charge has not been brought against the applicant in the décisive time in proceedings in the criminal case Gorilla. **The examination is limited only and exclusively to the acts of the National Crime Agency aiming at the détermination of origin of the recordings or vérification of their authenticity with respect to the implémentation of the warrants within the Gorilla operation, thus to the extent as it was specified by the applicant in his constitutional complaint and supplémentations thereto."***

20. Neither the award nor any part thereof implies that the LEA should examine the origin of the outputs of use of TMGI for other than for the purpose of the destruction thereof (the cessation of infringement of the rights of the Applicant J Hascâk) or that the LEA are to continue using the SIS after the examination of the origin of the outputs of use of TMGI or to use the outputs themselves for evidentiary purposes. **It is necessary to respect the award of the Constitutional Court in full and not to select what suits the LEA and SPO. Therefore, it is not possible to look only at one part of the award - the necessity to examine the origin of the outputs of use of TMGI with the SIS and disregard the other part of the award - the necessity to destroy such outputs if it is confirmed that these outputs hâve originated from the activities of the SIS.**

21. The Applicants thus object to the allégation of the Slovak Republic that they interpret the award, file No. I. ÜS 448/2021, "/n *a sélective mannef',* what the Slovak Republic daims without any reasoning, what such selectiveness should consist in, and without presenting its own interprétation of the award. The Applicants cannot imagine any other interprétation of the award than that it is to serve to protect the rights of the Applicant J Hascâk in the intentions of the Judgments of the ECHR

22 On 03 February 2023, with reference to these award, the supervising prosecutor of the SPO issued an order to examine the origin of the outputs of use of TMGI (whereby it has respected one part of the award), however not for the need of their destruction (respecting the Judgments of the ECHR) but for the purpose of additional disposai of the same and further evidentiary use thereof (whereby it has not respected another part of the award). Therefore, the Applicant J. Hascâk strongly objected against the order by the submission of 17 March 2023 (appendix 6), to which a prosecutor responded on 24 March 2023 by stating that:

"/n *the given issue, it still applies what was specified in a notification, file No. VII/2 Gv 2/23/1000-24 of 14 March 2023 (to what the notification ofthe General Prosecutor's Office of the SR, file No. IV/1 Spr 497/21/1000-2 of 04 October 2021 enclosed by you corresponds, which similarly as our statement, basically points to the principle of the so-called limited government, when it refers to the fact that* ***neither the Code of Criminal Procedure nor other generally binding legal régulation indicates a possibility to ensure the destruction of the outputs for the other authorities, thus neither for the law enforcement authorities even in the case if the authenticity or a source of the recording is verified in the future,*** *which statement the General Prosecutor's Office of the SR also confirms in its subséquent notifications, e.g., file No. IV/2 Gpt 561/21/1000-3 and 7 of 11 January and 14 September 2022) "* (appendix 7)

23 On the basis of a prosecutor's instruction of 03 February 2023, on 13 March 2023 the investigator asked the Director of the SIS to provide the following information:

"Pursuant to the instruction of the supervising prosecutor of the Spécial Prosecutor's Office of the General Prosecutor's Office ofthe SP of03 February 2023, file No. VII/2Gv 2/23/1 000-7 with reference to the Award of the Constitutional Court, file No. I. ÛS 448/2021 - 453 of 10 November2022 (especially, item 2 thereof), which stated the infringement of the rights of the Applicant Mgr Jaroslav Hascâk, I hereby kindly request you pursuant to Sec 3(1), (2) of the Code of Criminal Procedure, based on the submitted copy of the seized recordings from trace 21 (enclosed Blu-ray 25 GB a copy of imidlziu from USB - expert opinion PPZ-499/NKA-FP-BA-2012) to provide information to the following questions:

1. Whether it is a copy of the recordings destroyed by the procedure pursuant to Sec. 7(4) of Act No. 166/2003 Coll, originally produced on the basis of a decision of the Régional Court in Bratislava, file No. Ntt-3-D-2879/2005 of 23 November 2005, a decision ofthe Régional Court in Bratislava, file No. Ntt-3-D-482/2006 of 18 May 2006, or a decision of the Régional Court in Bratislava, file No. Ntt-2-D-100/2006 of 26 January 2006?

2. If yes, why they were destroyed by the procedure pursuant to Sec. 7(4) of Act No. 166/2003 Coll.? Kindly State whether ail of them hâve been destroyed, and if not ail of them hâve been destroyed, I kindly request you to provide authentic copies thereof.

3. Does the SIS dispose of any dérivative material from use of TMGI (transcriptions, analytical outputs, and others) in the régime pursuant to Sec. 17(6) of Act No. 46/1993 Coll, or even outside of this régime?

4. Identify particular persons that hâve corne into contact with the recordings on the basis of the decision ofthe Régional Court in Bratislava, file No. Ntt-3-D-2879/2005 of23 November 2005, the decision of the Régional Court in Bratislava, file No. Ntt-3-D-482/2006 of 18 May 2006m or the decision of the Régional Court in Bratislava, file No. Ntt-2-D-100/2006 of 26 January 2006 in the period from 23 November 2005 to 02 April 20082 (appendix 8)

24. It is clear from the questions raised that **only question No. 1 is legitimate and legal,** which leads to the answer of the SIS whether the outputs of use of TMGI, of which the LEA dispose, are a copy of the recordings produced during the intelligence operation "Gorilla".

25. For the question of confirmation of origin of the outputs of use of TMGI and their subséquent destruction, the following questions **are neither lawful nor relevant:**

- **Question No. 2,** because it is irrelevant for establishing the origin of the outputs of use of TMGI for what reason the SIS has destroyed these outputs and whether ail of them hâve been destroyed. The reason for destruction and the scope of destruction does not affect the answer to the question of the origin of the outputs of use of TMGI

  If not ail of the outputs of use of TMGI hâve been destroyed, the investigator asks for *"authentic copies thereof".* As this request is **in direct conflict with the Judgments** implying that the SIS is obliged to ensure the destruction of ail primary and dérivative materials from use of TMGI from the intelligence operation "Gorilla" in order to prevent further manipulation with them. **The obligation of the SIS to destroy these outputs of use of TMGI thus directly excludes the possibility that the SIS further spreads and provides these outputs to third persons (including the LEA).** Nevertheless, the investigator requests if from the SIS;

- **Question No. 3,** because if the SIS disposes of the dérivative material from use of TMGI, then it is obliged to destroy this dérivative material and not to provide it to third persons The information whether or not the SIS disposes of any dérivative material from use of TMGI from the intelligence operation Gorilla **is unable to confirm or réfuté whether the outputs of use of TMGI, of which the LEA dispose, hâve originated from the activities of the SIS or not;**

- **Question No. 4,** because the information itself which persons from the SIS environment hâve corne into contact with the Outputs of TMGI is unable to prove the origin of the outputs of use of TMGI in the LEA's disposai Even if the investigator has been informed about these persons, it could not interview these persons. The purpose of ensuring the exercise of the Judgments of the ECHR is the destruction of ail and any primary and dérivative materials from use of TMGI. The dérivative material from use of TMGI is information derived from the primary material from use of TMGI. In other words, it concerns information based on unlawful use of TMGI, and if TMGI was not unlawfully used, no such primary material from use of TMGI would hâve been created, and no dérivative material from use of TMGI could hâve been produced. **The dérivative material includes interviews (recorded and written minutes of interviews) relating to any content from use of TMGI within the intelligence operation Gorilla.**

26 Based on the effects specified in items 15 through 25, the Slovak Republic should clearly explain why the SPO and LEA request that the SIS acts in direct conflict with the Judgments.

As to the action plan of the exercise of the Judgment Hascâk

27. In the Notification, the Slovak Republic, inter alia, stated that ***"individual measures to a certain extent were carried out;*** *as stated in the* ***submitted action plans,*** *other measures and options are subject to assessment by relevant authorities including the Slovak Intelligence Service and the Régional Court in Bratislava*[1]"

28. In this context, please note that in the action plan to the exercise of the Judgment Hascâk (in the part *Payment ofjust satisfaction and* ***individual measures),*** the Slovak Republic stated that *"Following the judgment of the European Court in the case Zoltân Varga v. Slovakia, the applicant (together with Mr Zoltàn Varga) turned to the Bratislava Régional Court with a request to destroy both the primary material and dérivative material of the implémentation of the surveillance warrants Subsequently, he (together with Mr Zoltân Varga)* ***challenged the procedure ofthe Bratislava Régional Court, which, in their opinion, did not take any actions aimed at ordering the destruction or destruction of the material in a constitutional complaint filed on 1 March 2022 with the Constitutional Court of the Slovak Republic. The Constitutional Court of the Slovak Republic by its decision file no. 611/2022 of 10 November 2022 admitted the complaint for further proceedings. The proceedings are pending"***

29. It concerns the proceedings completed by the award of 29 March 2023 described above in item 7d), in which the Constitutional Court stated that the RC BA is not obliged to actively provide for the destruction of the Outputs of TMGI by applying authoritative supervision over the SIS, thus the RC BA cannot instruct the SIS to destroy the Outputs of TMGI. **The proceedings are conducted before the Constitutional Court and their resuit does not represent any effective individual measure for these two reasons.**

30 Firstly, the mere fact is perfidious that instead of respecting the Judgments and proceeding to the destruction of the Outputs of TMGI, the RC BA refused to perform this obligation saying that it is not so obliged based on the national législation (the same it claimed in the proceedings before the ECHR, what the ECHR refused in the Judgments), the Applicants were thus forced to refer to the

Constitutional Court so that the Constitutions! Court itself imposes the satisfaction of this obligation on the RC BA. **The Slovak Republic (and its authorities) is to proceed to ensuring the exercise of individual measures ex *offo,* and the Applicants are not obliged to seek the satisfaction of such individual measures before judicial and other authorities, what they were doing unsuccessfully for the recent ten years before the issuance of the Judgments of the ECHR.**

31 Secondly, the Constitutional Court concluded that the RC BA is not entitled or obliged to instruct the SIS to destroy the Outputs of TMGI, despite the obligation to provide for the exercise of the Judgments of the ECHR, its previous decisions, allégations made in the proceedings before the ECHR, and directly applicable Convention which takes precedence before (although unclear or incomplète) the national législation.

Final proposai

32. Ail the above specified facts indicate that the Slovak Republic and its authorities hâve no intention to immediately effectively proceed to ensuring the exercise of the Judgments of the ECHR Therefore, the Applicants propose the Committee of Ministers to take measures, including guidelines and/or active interventions in order to ensure the progress in the exercise of both Judgments, official expression of concern about the exercise of the Judgments, or a submission of proposais to exercise the Judgments. **The Applicants proposed that the issue of the exercise of both Judgments is submitted to the next plenary session of the Committee of Ministers of the Council of Europe (1475th DH) to examine the matter with debate and to adopt possible intérim resolutions considering the possibility of initiating *infringement proceedings* pursuant to Art. 46 Sec. 4 of the Convention.**

Respectfully,

Ing. Zoltân Varga
By proxy Škubla & Partneri s. r. o.
Law firm
Mgr. Martin Škubla
Executive Officer and Advocate

Mgr. Jaroslav Hascâk
By proxy Škubla & Partneri s. r. o.
Law firm
Mgr. Martin Škubla
Executive Officer and Advocate

Appendices:

1 The statement of the Slovak Intelligence Service *"Action for satisfaction of non pecuniary damage otherwise than in money pursuant to Act No. 514/2003 Coll, on Liability for Damage Caused in the Exercise of Public Authority and on Amendment and Supplémentation to Certain Laws, supportively to protect personality pursuant to the provision of Sec. 13(1) of the Civil Code*[11] of 27 January 2022;

2. Letter "*Exercise of the Judgments of the European Court of Human Pights in the cases Zoltân Varga v Slovak Republic (Nos 58361/12, 27176/16, and 25592/16) and Hascàk v Slovak Republic (Nos 58359/12, 67667/16, and 27787/16) response* No 11908/2023/AB of 02 March 2023;

3. Response to the notification of the exercise of the judgments of the European Court of Human Rights and application for additional information of 29 March 2023;

4 Award of the Constitutional Court of the Slovak Republic, file No III ÙS 611/22 of 29 March 2023;

5 Complaint to provide for proper exercise of the binding judgments of the European Court of Human Rights of 06 March 2023;

6 Statement to the prosecutor's instruction of 03 February 2023 and proposai to take evidence; of 17 March 2023;

7. "Case of the accused Mgr. Jaroslav Hascàk and co. - examination of the procedure of a police officer pursuant to Sec 210 of the Code of Criminal Procedure and other notification", No VII/2 Gv 2/23/1000-32; of 24 March 2023;

8 "Application sending", file No PPZ 342/NKA BA2 2019 of 13 March 2023