# Answers of the Ministry of Justice of the Slovak Republic and Ministry of Economy of the Slovak Republic in respect of the Questionnaire on Report to the General Assembly on torture-free trade: examining the feasibility, scope and parameters for possible common international standards

## *What are the regional and/or national Instruments or policies guiding your country for the regulation of trade of good used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment? Please provide examples. Which government department/agency is responsible for monitoring the implementation of such regulations/policies, if any?*

***Ministry of Justice of the Slovak Republic:***

Slovakia has signed and ratified most of the international human rights instruments, whether introduced by the UN or the Council of Europe, among others the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “CAT”) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (establishing the Committee for the Prevention of Torture of the Council of Europe).

In respect of the regulation of trade of goods used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment, Slovakia is a member state of the Global Alliance for Torture – Free Trade established on joint cooperation of the EU, Argentina and Mongolia. The Global Alliance for Torture – Free Trade aims to end the trade of goods used to carry out death penalty and torture.

Being a member state of the EU, the EU legislation in this respect applies to Slovakia as well. The major EU instrument aimed at this topic is the Regulation (EU) 2019/125 of the European parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as “Anti – Torture Regulation” or “Regulation”) which entered into force as of 20 February 2019. This Regulation consolidates the various amendments to Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment into one comprehensive document and repeals the Regulation No 1236/2005. The Anti – Torture Regulation is directly applicable in the Slovak Republic and part of the Slovak legislation.

The Anti – Torture Regulation lays down rules governing trade with third countries in respect of goods which have no practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as “goods A”) in articles 3 – 10.

Import, export or transit of such goods through customs territory of the EU is prohibited. A competent authority (an authority of one of the EU member states listed in Annex I) may authorise import, export or transit if the goods A will be used for the exclusive purpose of public display in a museum in view of their historic significance. It is also prohibited to offer and supply training on the use of the goods A; offer and supply brokering services in respect of the goods A, irrespective of the origin of such goods; promote sale of the goods A on fair trades within the EU territory; advertise or sell/purchase advertising spaces or time for advertisement of the goods A.

A list of the goods A in enshrined in the Annex II to the Anti – Torture Regulation and includes their codes (CN code) and short descriptions. This list is divided into 4 main categories: (1) goods designed for the execution of human beings, (2) goods which are not suitable for use by law enforcement authorities to restrain human beings, (3) portable devices which are not suitable for use by law enforcement authorities for the purpose of riot control or self-protection, (4) whips.

Articles 11 – 15 of the Anti – Torture Regulation lay down rules on export and transit of goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as “goods B”).

For export of the goods B it is necessary to obtain an authorisation issued by the competent authority. This authority takes into consideration whether essentially identical export has been dismissed by another member state in the preceding 3 years, what is the intended end-use and the risk of diversion from the intended end-use. It also takes into account available international court judgments and findings of the competent bodies (e.g. the UN, the COE) and may take into account information provided by civil society organisations and restrictions on export issued by the country of destination. The competent authority shall not grant any authorisation when there are reasonable grounds to believe that the goods B might be used for torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment, by a law enforcement authority or any natural or legal person in a third country. The competent authority shall also asses any contractual obligations between the exporter and distributor and also information provided by the exporter on the end-user. Authorisation is also required for providing of certain services such as technical assistance or brokering services.

In respect of transit, persons resident or established within the EU are prohibited to participate on transit of the goods B if they know that any part of a shipment of such goods is intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a third country. A list of the goods B included in Annex III is divided into (1) goods designed for restraining human beings, (2) weapons and devices designed for the purpose of riot control or self-protection and (3) weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection and certain related substances.

The last category of goods regulated by the Anti – Torture Regulation is goods that could be used for the purpose of capital punishment (hereinafter referred to as “goods C”). Similarly to the goods B an authorisation for export of such goods is required, the procedure is the same as for the goods B. Authorisation cannot be granted if there are reasonable grounds that the goods C might be used for capital punishment in the third country. Same rules in respect of transfer and providing of technical assistance or brokering services as for the goods B apply to the goods C. Annex IV stipulates that products which could be used for the execution of human beings by means of lethal injection belong to the goods C.

Furthermore, the Anti – Torture Regulation sets rules on jurisdiction of the competent authorities in member states, establishes a Union General Export Authorisation and an Anti – Torture Coordination Group, provides model forms for authorisations and stipulates periods of validity for authorisation (from 3 to 12 months with possible extension up to 12 months and for global authorisation from 1 to 3 years with extension up to 2 years).

For Slovakia, the authorisation authority is the Ministry of Economy of the Slovak Republic.

The Council Regulation (EC) No 1236/2005 has been also implemented in a form on national legislation – the Act no. 474/2007 Coll. on trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as “Act no. 474/2007 Coll.”) dealing with allocation of competencies, rights and duties of state authorities:

* the Ministry of Economy of the Slovak Republic – the main competent and deciding authority, deals also with the offences of unauthorised import/export of goods;
* the Ministry of Culture of the Slovak Republic – provides binding advisory opinion in respect of export, import and transfer of goods used in museums;
* the Ministry of Foreign and European Affairs of the Slovak Republic – provides binding advisory opinion in respect of goods aimed at restraining of human beings;
* the Customs Administration of the Slovak Republic – for controlling of issued authorisation or whether goods are truly imported/exported for authorised purpose, deciding in the first instance on offences violating prohibitions or authorisation rules on import/export of goods.

Furthermore, at the EU level the Council of European Union as of 16 September 2019 adopted a revised version of Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defining policies that the EU will use in respect of third countries to combat torture (e.g. to sign the CAT and its Optional Protocol, to establish a preventive mechanism under the Optional Protocol to CAT, to sign the UN Standard Minimum Rules for the Treatment of Prisoners, withdrawing reservations towards the human rights instruments that contravene the CAT, to abolish death penalty, to implement international standards to national legislation, to ensure victimsˈ rights protection).

**Ministry of Economy of the Slovak Republic:**

The trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment is regulated in the Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. It is legally binding and directly applicable in all EU Member States.

With Regulation (EU) 2019/124, the EU has put into place a comprehensive instrument that is providing a legally binding basis for the regulation of the trade of such goods for the 27 Member States of the European Union.

Ministry of Economy of the Slovak Republic, Department of Trade Measure is the competent licensing authority for the implementation of the EU legislation.

## *Have there been any investigation, prosecutions and/or convictions for breaches of national regulations on the trade in goods indicated in paragraph 8 of the introduction to this questionnaire? If so, please provide details.*

**Ministry of Justice of the Slovak Republic:**

Given the short notice and the current situation concerning COVID-19, the Ministry of Justice of the Slovak Republic has not been able to obtain relevant data in this respect from the competent authorities. Based on the Act no. 474/2007 Coll. the competent authority to decide on offences is the Ministry of the Economy of the Slovak Republic and the Customs Administration of the Slovak Republic. Both are entitled to issue a monetary fine when violation of the relevant rules on import/export of goods occurs.

**Ministry of Economy of the Slovak Republic:**

Breaches of Regulation (EU) 2019/125 are a criminal or administrative offence. Penalties for violations of Regulation (EU) 2019/125 is from 16 560,-EUR to 33 120,- EUR. However, we are not seeing any violations of the Regulation or imposing a fine.

## *Do you agree with the proposed categorisation of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment indicated in paragraph 8 of the introduction to this questionnaire (see above)? If not, which categories would you propose?*

**Ministry of Justice of the Slovak Republic:**

The proposed categorisation of goods indicated in paragraph 8 of the introduction to the questionnaire is very similar to categorisation introduced by the Anti – Torture Regulation. The first category, goods that have no practical use other than for the purpose of torture and other cruel, inhuman and degrading treatment and punishment and the third category, goods which have no practical use other than for the purposes of capital punishment with its examples fall within the category of the goods A. Goods that could be misused for the purpose of capital punishment are in conformity with the goods C. Based on the examples given for the category of goods that could be misused for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, this category can be found in the goods A and the goods B.

Given the already existing legislative framework of the EU, it would be necessary (while adhering to the main categorisation) to harmonize the examples of goods in order to avoid any misunderstanding or legislative conflicts. Otherwise, the proposed categorisation seems very adequate and covering all essential goods.

**Ministry of Economy of the Slovak Republic:**

The following categories of goods are proposed:

i. goods which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment,

ii. goods that could be used not only for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes,

iii. goods that could be used for the purpose of capital punishment (products which could be used for the execution of human beings by means of lethal injection).

## *Please indicate whether you believe there should be an exhaustive list of goods under each category. If yes, should there be a mechanism for regular updating of the lists under each category?*

**Ministry of Justice of the Slovak Republic:**

Having exhaustive lists under each and every category may pose a practical problem when adopted at the international level. Such lists can become obsolete and an update mechanism can take a considerable amount of time while possibly requiring further actions from participating states (e.g. discussions, experts’ opinions, requiring singing or ratification while opposing problems of finding consensus or majority). Therefore lists by example mentioning the goods that are up to the date of adoption of such lists considered as falling within the categories would be more appreciated. State could be also given the possibility for individual consideration whether other then the enlisted goods or parts of certain goods can be misused for purposes of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. Therefore a combination of non-exhaustive lists and a descriptive definition of goods falling under each category could be more appropriate and effective in achieving the purpose of identifying goods that can be solely used or could be misused for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment.

**Ministry of Economy of the Slovak Republic:**

The list of goods under each of the three categories described above should be as exhaustive as possible.

In order to respond quickly when new goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, are developed, it would be appropriate to develop a mechanism to add goods where there is a clear and immediate risk that those goods will be used for purposes that entail such human rights abuses.

## *Should the proposed common international standards prohibit trade in goods which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment? If not, please provide further explanations.*

**Ministry of Justice of the Slovak Republic:**

Slovakia, being one of the co-sponsoring states of the UN Resolution *“Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards“,* believes that international standards in this respect should be adopted. Prohibition of torture as one of the most important peremptory norms of the international law requires from states not only to abolish torture or its criminalisation but to take actions to prevent occurrence of this crime. Adoption of international standards prohibiting trade in goods designed for the sole purpose of torture or other cruel, inhuman or degrading treatment or punishment is one of the means that can eliminate the occurrence of this crime. In respect of capital punishment, Slovakia supports the EU initiatives and agrees with the policy on absolute abolishment of capital punishment.

**Ministry of Economy of the Slovak Republic:**

Yes. It is considered necessary to prohibit exports and imports of goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

Respect for human rights and for human dignity are EU founding values, common to the EU Member States.

Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms all lay down an unconditional, comprehensive prohibition on torture and other cruel, inhuman or degrading treatment or punishment.

Article 2(2) of the Charter of Fundamental Rights of the European Union (Charter) states that no one shall be condemned to the death penalty or executed. Article 4 of the Charter states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The Global Alliance for Torture-Free Trade is a major concrete initiative to deliver on the EU’s shared commitment to the eradication of torture and capital punishment.

## *Should the proposed common international standards provide for strict control of trade in goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and goods that could be used for the purpose of capital punishment? If not, please provide further explanations.*

**Ministry of Justice of the Slovak Republic:**

The position in respect of this question is similar to question no. 5. In our opinion and given the already applicable EU legislation, international standards should provide also for control of trade in goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and goods that could be used for the purpose of capital punishment. Certain type of goods can be misused rather easily for purposes that are prohibited under the peremptory norm of international law. Therefore states should make all efforts to eradicate practices that violate basic human rights.

**Ministry of Economy of the Slovak Republic:**

Yes. It is also necessary to impose controls on exports of certain goods which could be used not only for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes. Those controls are instrumental in promoting respect for human dignity and for fundamental human rights.

## *What types of activities linked to “import, export and transfer” should the proposed common international standards regulate? Please consider activities such as transit, promotion, technical assistance and training, brokering, sharing technology, manufacturing, production and commercial marketing, among others. Please also provide an explanation for why these activities should be regulated or not.*

**Ministry of Justice of the Slovak Republic:**

The Anti – Torture Regulation deals with activities such as promotion, providing of technical assistance, training or brokering services. Such activities directly connected to import, export or transfer should be regulated also by the proposed common international standards. It is essential to prevent or impede access to services as brokering or promotion in order to minimise possible import, export or transfer of goods that have no practical use other than for the purpose of capital punishment or torture and other cruel, inhuman or degrading treatment or punishment. These activities should also be regulated in respect of goods that could be misused for such purposes and therefore only officially recognised, authorised brokers or promoters offering guarantees that goods will not be misused, should be allowed to provide their services.

The Anti – Torture Regulation omits manufacturing of such goods since it concerns only trade with third countries outside the EU. The manufacturing regulation should concern goods that have no practical use other than for the purpose of torture other cruel, inhuman or degrading treatment or punishment or capital punishment. In order to prevent use of such goods and its illegal import, export and transfer it is important to minimise also production of them and making tracing of these goods on the market to its end-users even easier.

**Ministry of Economy of the Slovak Republic:**

With regard to goods that could be used for the purpose of capital punishment and goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, the proposed international regulatory framework could include the following activities: export, transfer/ transit, brokering services and supply or acceptance of technical assistance related to the regulated goods.

With regard to goods which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment, the proposed international regulatory framework could include in addition to the activities referred to above: import, training on the use of the regulated goods, promotion in trade fairs or exhibitions, and selling or purchasing advertising.

## *8. Please indicate which risk assessment mechanism and criteria should be considered for the import, export and transfer of a) goods that could be use for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and b) goods that could be used for the purpose of capital punishment. Please consider, inter alia, the criteria for preventing diversion to third countries.*

**Ministry of Justice of the Slovak Republic:**

In respect of both categories of goods mentioned in question 8 similar general rules could apply. The following criteria could be used for purpose of assessment mechanism:

* *History of the exporter/importer and their credentials* – has there been any previous applications for granting of authorisation for import, export or transfer in any of the cooperating countries? Have any of them been denied? Is it an established well-known entity in one of the countries or is it a newly established entity? What is the commercial structure of the importer/exporter (e.g. limited liability company, joint stock company)? Who is the end – user beneficial of the importer/exporter?
* *Sale documents* – is the import/export organised for a certain end-user? What are the contractual obligations of the seller/buyer? Do they include prohibition on further sale to third persons or right to repurchase for the seller? Are there any guarantees provided by the seller on reviewing the purpose and actual use of the goods?
* *End -user*  – Is the buyer/end-user a state authority/governmental authority? Is it a medical organisation or institution? Is it a private entity?
* *Guarantees on the country of import of goods* – consideration of any judgments/opinions of international bodies, valid legislation of the country in respect of capital punishment and torture (e.g. Is capital punishment prohibited in the country? Has the country ratified the CAT and its Optional Protocol? Does the country participate in any initiatives on torture-free trade?), opinions of relevant civil society organisations. Also the rules on import/export/transfer of goods of the country of import should be considered for possible evaluation whether goods could be easily transferred to another country or whether further transfer requires an official authorisation.

For international cooperation it could be also considered establishment of an international register for authorised importers/exporters including information on previous authorisations and basic information on structure of the entity or establishment of national registers with an opportunity to request basic information on the importer/exporter for the relevant national authority (i.e. these registers could include information on museums or national sites where such goods could be or usually are displayed). Relevant could be an initiative – a webpage with easily accessible information on import, export and transport rules valid in each country.

**Ministry of Economy of the Slovak Republic:**

a) Regarding goods which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment, trade should be prohibited. Exemptions should be provided for the exclusive purpose of public display in a museum.

b) Regarding the category (ii) and (iii) of goods referred to in question 3, exports, technical assistance and brokering services should be regulated, i.e. subject to an authorisation requirement. Such authorisation should not be granted when there are reasonable grounds to believe that the goods to be exported or the goods to which the technical assistance or brokering services refer to might be used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment, by a law enforcement authority or any natural or legal person. The competent authority shall take into account all relevant considerations, including considerations about intended end-use and the risk of diversion. When assessing the risk of diversion, it may consider the contractual arrangements that apply and the end-use statement signed by the end-user. The transit of category (ii) and (iii) goods should be prohibited if the person executing the transit knows that any part of a shipment of such goods is intended to be used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment in a third country.

## *9. Please indicate what you consider to be the most suitable type of international instrument to establish common international standards for regulating goods used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. Please provide further explanation.*

**Ministry of Justice of the Slovak Republic:**

In order to make the instrument accessible and effective, it is necessary for it to be a legally binding. Given the human rights element, the form of an optional protocol to CAT could be considered. Under these auspices a relevant control mechanism could be established as well. A form of resolution adopted by the General Assembly of the UN seems inadequate given the possibility of becoming just a soft-law instrument. However, it may be considered in case the consensus on a binding instrument would not be reached among majority of states. An instrument that would become binding only on states that have already adopted measures to prevent trade of these categories of goods would not be sufficient.

**Ministry of Economy of the Slovak Republic:**

The most suitable type would be a legally binding instrument establishing measures to control and restrict trade in the goods referred to in answer to question 3. It could draw inspiration from the rules, principles and mechanisms established in the Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Only an international legally binding instrument could close the gap and put an end to the trade in these goods.