

The General Prosecutor's Office of the Slovak Republic

Bratislava the 11. October, 2007
I/2 Spr 72/07

*BUREAU
OF THE CONSULTATIVE COUNCIL
OF EUROPEAN PROSECUTORS
(CCPE – Bu)*

Questionnaire – on the role of prosecutors beyond the criminal field – replies

Part II.

5. The system of the Slovak Public Prosecution Service consists of the following units:

- a) The General Prosecutor's Office of the Slovak Republic (hereinafter referred to as "General Prosecution") including Office of Special Prosecution as a part of it, with the nationwide jurisdiction (Section 55b to 55n, Act no. 153/2001, Coll. as amended).
- b) Regional prosecution offices
- c) Higher Military Prosecution Office
- d) District Prosecution Offices
- e) Circuit Military Prosecution Offices.

Within the system of these units, there is an organizational section carrying out activities in the extra-penal field. On the level of the District Prosecution Offices, as a rule, one prosecutor is charged with the tasks regarding civil proceedings. On the regional level, this area is covered by a separate department. In the General Prosecution, a separate department performs these duties, and it is divided into three sections:

- section for supervision over public administration authorities
- section for civil judicial matters
- section of legislation.

6.

- a) The Act on Public Prosecution Service no. 153/2001, Coll. as amended is the basic law regulating scope of powers or the public prosecution service in the civil field.

In the Section 4, par. 1, Act on Public Prosecution Service, the basic scope of powers is regulated in the extra-penal field as follows:

- exercise of its powers within proceedings before the courts
- representing the State in the proceedings before the courts if so provided pursuant to a separate law
- supervision over compliance with laws by public administration authorities within the scope of its powers defined in this Act,
- fulfillment of any other tasks if so stipulated by separate law or international treaty promulgated in legally defined manner.

It means that the Public Prosecution Service exercise its powers in the extra-penal field within two levels, on the one hand, it oversees and supervises the decision-making by public administration authorities, on the other hand, it also applies/exercises its powers within civil judicial proceedings either via motions either by joining civil cases including the Constitutional Court of the Slovak Republic.

When supervising the observance of laws by public administration authorities, the prosecutor supervises over law observance and other generally binding regulations by the public administration authorities within the scope stipulated in the Act on Public Prosecution Service.

The prosecutor carries out the supervision over observance of laws and other generally binding regulation by the public administration authorities by the following means:

- a) reviewing the lawfulness of
 1. generally binding regulations issued by the public administration authorities
 2. guidelines, resolutions, ordinances, measures and other legal acts issued with a view to ensure proper and due performance of tasks in the field of public administration (hereinafter referred to as “measure”)
 3. decisions made on different matters in the field of public administration (hereinafter referred to as “decision”)
 4. procedure followed by the public administration authorities when issuing measures and making decisions
- b) checking upon the constant compliance with laws
- c) casting an advisory vote at the meetings of the public administration authorities.

The statutory means by which the prosecutor oversees and supervises compliance with laws and other generally binding regulations by the public administration authorities are as follows:

- a) prosecutor’s protest
- b) prosecutor’s notice
- c) petition to instigate the court proceedings pursuant to a separate law.

The statutory means by which the prosecutor oversees and supervises compliance with laws and other generally binding regulations by the public administration authorities also is the General Prosecutor’s petition to instigate the Constitutional Court proceedings on compliance with laws.

In the filed of civil judicial proceedings, the prosecutor exercises his powers within the scope defined in separate laws. Primarily, it is the Act no. 99/1963 - Civil Procedure Code as amended.

The Civil Procedure Code regulates the prosecutor’s powers and also the powers of the Prosecutor General.

Prosecutor’s scope of powers according to the Civil Procedure Code (CPC):

Pursuant to the Section 35, par. 1, CPC, the prosecutor is empowered to file a civil motion for the instigation of the civil proceedings,

- a) if so provided by a separate law
- b) if it concerns examination of lawfulness of the decisions made by the administration authorities in the cases where the prosecutor's protest has not been complied with; the terms and conditions of this Act have to be fulfilled,
- c) if it concerns inactivity/failure to act of a public administration authority in the cases where the prosecutor's notice has not been complied with; the terms and conditions of this Act have to be fulfilled,
- d) if it concerns the enforcement of a motion by the State pursuant to a separate law with the aim of rendering unjust enrichment including property benefit generated from illicit sources.

Pursuant to the Section 35, par. 2, CPC, the prosecutor is empowered to join a pending case with regard to the following matters:

- a) legal capacity
- b) declaration of death
- c) making an entry in the Commercial Register
- d) upbringing of minors
- e) guardianship
- f) bankruptcy and settlement.

The General Prosecutor's scope of powers pursuant to the CPC:

Pursuant to the Section 243e, par. 1, CPC, the General Prosecutor may submit extraordinary appellate review to the court if he finds out on the basis of a petition by a party to the proceedings or by a person affected/concerned by the court's decision or by a party injured by a court's decision that by the final decision of a court, a law has been breached and, if it is so required by the protection of rights and legally protected interests of natural persons, legal entities or the State and if it was established that such protection is impossible to be ensured by other legal means.

7.

- a) As for the position of the Public Prosecution Service in the extra-penal field, the European Court for Human Rights has rendered a judgment in the case Paulik v. Slovak Republic the 19 September, 2006 (Application no. 10699/05). Procedure by the Public Prosecution Service was subject to the application since it failed to submit a motion to deny paternity after excluding from paternity the father according to the DNA test while the father's paternity had been declared by a court.
- b) Status and powers of the Constitutional Court are regulated in the Article 129, par. 2, Constitution of the Slovak Republic as well as in the Act no. 38/1993, Coll. on Organization of the Constitutional Court of the Slovak Republic, on proceedings before that court and on status of the constitutional judges as amended. From these regulations, the competence results of the Constitutional court to decide on constitutionality of different laws.

In its judgment PL.US 17/96 of 24 March, 1998, the Constitutional Court of the Slovak Republic has specially dealt with the status of the Public Prosecution Service. As far as some powers of prosecutor in civil judicial proceedings are concerned, the Constitutional Court has passed two decisions, i.e. judgment no. PL. US 43/95 of 10 September, 1996 and resolution no. Pl. US 57/99 of 19 July, 2000. In both cases, the Constitutional Court expressed its opinion as for the issue of the prosecutor's participation in civil judicial proceedings in the matters where he/she joined pending case or he/she dealt with the issue of constitutionality of procedure by the General Prosecutor who is empowered to submit extraordinary appellate review against valid court's decision.

8.

In our view, any powers of both prosecutor and General Prosecutor in extra-penal field are important in order to strengthen legality and protection of human rights. As for the powers of a prosecutor mentioned in the Section 35, par. 1 d), CPC, we consider these powers as less important because in that case, the Public Prosecution Service substitutes the entitlements of another authority (district/metropolitan authority).