

## Slovak Republic / République slovaque

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

The Prosecutor's Office of the Slovak Republic reacts to the decisions of international courts and treaty monitoring bodies by drafting systematic modification, namely changes in the wording needed for the elimination of deficiencies outlined in the decisions of international courts and treaty monitoring bodies, and by applying principal propositions to the drafted legislative motions submitted to the legislative process.

In the criminal proceedings, the prosecutor is authorized to submit a special legal remedy when the decision of the European Court of Human Rights states that in a decision of a prosecutor or court of the Slovak Republic or in previous proceedings, there was a breach of fundamental human rights and freedoms of the accused, if such negative cause of the decision cannot be remedied in another manner.

In case of affirming a conflict of the national law with an international treaty binding the Slovak Republic, the General Prosecutor of the Slovak Republic is competent to initiate proceedings on the conformity of the provisions with the international treaty, by submitting a motion to the Constitutional Court of the Slovak Republic.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

The Prosecutor's Office of the Slovak Republic does not have specific information on the appliance of measures taken in the practical independence of the Prosecutor's Office and of the specific prosecutors, nor it does not have information concerning any systematic deficiencies or interventions into the independence of the procedural performance of the prosecutors.

3. Are these measures reflected in the law or in the prosecution policy or debate?

There is an ongoing discussion at the Prosecutor's Office on the further development of the constitutional system and on the position and roles of the main bodies of the Prosecutor's Office within the latter. The General Prosecutor's Office of the Slovak Republic and also specific prosecutors carrying out professional activities support the preservation of the position of the Prosecutor's Office of the Slovak Republic as of an independent authority separated from the executive, legislative and court power, as well as of other principles in accordance with the recommendations of the Venice Commission.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

There were no major changes made in the position of the Prosecutor's Office nor in the position and competence of the specific prosecutors.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

Previously, the issue of the independence of the Prosecutor's Office and of the prosecutors was particularly dealt by the Constitutional Court of the Slovak Republic. In the finding no. PL. US 105/201 of 7 May 2014, it has affirmed a conflict of some parts of the Act on the Prosecutor's Office and of the Act on Prosecutors and Trainees of the Prosecutor's Office in respect to the Constitution of the Slovak Republic. Namely, concerning provisions enabling the impact of executive power (Minister of Justice) on the procedure of the Prosecutor's Office and of the prosecutors and/or that were limiting the competence of the General Prosecutor of the Slovak Republic.

Namely, it concerned provisions which:

- entitled the Minister of Justice to submit a motion for disciplinary proceedings of a prosecutor,
- limited the General Prosecutor in issuing opinions binding the prosecutors and assistants of prosecutors in such a way, that the opinion had to be proposed by the commission of members nominated by the Minister of Justice represented in the same number as those nominated by the General Prosecutor,
- outlined the creation of a commission carrying out the selection proceedings of prosecutors, of transferring a prosecutor to a superior level and for the function of a chief prosecutor, without any competence of a General Prosecutor in creating the Selection Commission and in proposing candidates as members of the Selection Commission, as well as in regards to the result of the selection process.

6. Does the prosecution system in your country belong to the judiciary?

The Prosecutor's Office is not a part of the judiciary system in the Slovak Republic.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

The Prosecutor's Office in the Slovak Republic is a sui generis authority. It is not dependent of the legislative or executive power. The Prosecutor's Office is an autonomous and hierarchically organized system of public bodies lead by the General Prosecutor, where prosecutors act in relations based on subordination and superiority.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

The self-administration bodies of prosecutors are set for the protection of rights and interests of prosecutors. The role of self-administration bodies of prosecutors is not to monitor and assure the independence of the Prosecutor's Office, nor to monitor the manner of operation of the Prosecutor's Office.

The representative of self-administration of prosecutors is:

- a) Assembly of the Prosecutors of the General Prosecutor's Office and the Prosecutors' Council of the General Prosecutor's Office,
- b) Assembly of the Prosecutors of the Regional Prosecutor's Office and the Prosecutors' Council of the Regional Prosecutor's Office,
- c) Council of Prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The members of self-administration bodies of prosecutors (Prosecutors' Council of the General Prosecutor's Office and of the Regional Prosecutor's Offices) are elected at the assembly of prosecutors in a secret ballot from among the prosecutors. The Council of Prosecutors consists of the Chairmen of the Prosecutors' Councils. The result of the ballot of self-administration bodies of prosecutors is an expression of individual will of the specific prosecutors. Having regard to the form of the ballot, no other factors affect its outcome.

10. Who has the initiative of disciplinary proceedings?

The motion to commence disciplinary proceedings may be submitted by the petitioner who may be:

- a) the General Prosecutor against a prosecutor of any Prosecutor's Office,
- b) the General Prosecutor or Special Prosecutor against a European Delegated Prosecutor for reasons unrelated to the performance of duties of a European Delegated Prosecutor pursuant to a separate regulation,
- c) the Chief European Prosecutor or European Prosecutor of the Slovak Republic against a European Delegated Prosecutor for reasons related to the performance of duties of a European Delegated Prosecutor pursuant to a separate regulation,
- d) an Ombudsman against a prosecutor of any Prosecutor's Office supposing that while performing his duties he breached the fundamental rights and freedoms of the motion's author seeking legal protection by the ombudsman, where such conduct would be in conflict with the national law or principles of democratic rule of law,
- e) a Deputy of the General Prosecutor against prosecutors of the General Prosecutor's Office and Chief Prosecutors under his competence,
- f) a competent Regional Prosecutor against a prosecutor of a Regional Prosecutor's Office or of a District Prosecutor's Office,
- g) a competent district prosecutor against a prosecutor of a District Prosecutor's Office,
- h) an entity authorized to submit a motion to commence disciplinary proceedings against the General Prosecutor regulated by a separate provision.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

The prosecutor is appointed by the General Prosecutor into the function of a prosecutor without any time limitation to a specified District Prosecutor's Office.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

The rules of appointment, transfer and disciplinary measures are regulated by separate laws; concerning the judges pursuant to the Act on Judges and Associate Judges, regarding prosecutors pursuant to the Act on Prosecutors and Trainees of the Prosecutor's Office. Generally they may be assessed as similar to each other. They differ in entities authorized to appoint judges and prosecutors into their function, or transferring them to another court or Prosecutor's Office, further in the type of disciplinary measures and in the amount and time-period of the measure of reduction of salary.

The judge is appointed by the President of the Slovak Republic based on the motion of the Court Council without any time limitation.

A judge may be transferred to another court by the Court Council only with their previous consent, based on their request or based on the decision of the Disciplinary Senate. A judge may be transferred to a vacant position set by the Minister pursuant to a separate provision.

If it is a transfer of a judge within a court of the same instance, the judge may be transferred to a vacant position determined after the judge's request for a transfer to another court. The judge will be transferred to a court of superior instance based on the results of the selection procedure and in accordance with the principles of promotion of judges. A judge will be transferred to a court of inferior instance by the Court Council based on the decision of the Disciplinary Senate.

Within disciplinary proceedings, a judge may be imposed:

- a) a reprimand,
- b) a reduction of salary up to 30% for 3 months maximum. In a repeated disciplinary misconduct committed by the judge in the time before the expiration of the disciplinary measure, it may be imposed up to 6 months,
- c) to issue publicly a decision on the fact that the judge did not prove the source of the accrument of his assets in the correspondent year in the manner set by law.

For a serious disciplinary misconduct, the Disciplinary Senate shall impose a disciplinary measure from among the following:

- a) transferring the judge to a court of inferior instance,
- b) reduction of salary from 50% to 70% from 3 months to 1 year,
- c) to issue publicly a decision on the fact that the judge did not prove the source of the accrument of his assets in the correspondent year in the manner set by law, damaging so the seriousness and dignity of the function of a judge or endangering the confidence in independent, impartial and fair decisions of courts.

The prosecutor is appointed into the function of a prosecutor by the General Prosecutor without any time limitation to the determined District Prosecutor's Office.

The transfer of a prosecutor to another Prosecutor's Office is decided by the General Prosecutor under the conditions laid down by the Act on Prosecutors and Legal Trainees of the Prosecutor's Office.

The prosecutor may be transferred to another Prosecutor's Office only if they agree with the transfer or the transfer is requested by themselves, if it is not otherwise laid down.

The General Prosecutor will transfer a prosecutor to another Prosecutor's Office even without their consent, if it is imposed by a disciplinary measure (transfer to a subordinate Prosecutor's Office).

The General Prosecutor will transfer a prosecutor to another Prosecutor's Office even without their consent, if it is a transfer to a Prosecutor's Office of the same level within the territorial unit of the same municipality.

A prosecutor may be transferred to a Prosecutor's Office of a superior level only on the basis of a selection process and in accordance with the principles of promotion of prosecutors approved by the General Prosecutor and by the Council of Prosecutors.

In the disciplinary proceedings, the prosecutor may be imposed:

- a) written reprimand,
- b) reduction of base salary up to 15% for 3 months maximum. In a repeated disciplinary misconduct committed by the prosecutor in the time before the expiration of the disciplinary measure, it may be imposed up to 6 months.

For a serious disciplinary misconduct, a disciplinary measure will be imposed to the prosecutor under the conditions laid down by this Act:

- a) reduction of base salary from 15% to 50% up to 1 year,
- b) withdrawal from the position of a Chief Prosecutor,
- c) transfer to a Prosecutor's Office of a subordinate level,
- d) depose of a prosecutor's function.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The government cannot issue instructions to the Prosecutor's Office on the procedures within the criminal proceedings.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

(1) If it is not further otherwise laid down, a superior prosecutor has the right to  
a) instruct the subordinate prosecutor on how to act in proceedings and how to perform the tasks,  
b) carry out actions of a subordinate prosecutor or decide that it will be carried out by another subordinate prosecutor.

(2) The instruction given to the subordinate prosecutor shall always be in writing. The subordinate prosecutor is obliged to act under instruction if not otherwise herein provided. If the matter cannot be delayed, the superior prosecutor may issue the instruction also orally, by phone, fax or electronic means. The instruction issued orally, by phone, fax or electronic means without a certified electronic signature must be reissued by the prosecutor within 48 hours in written form or by electronic means with a certified electronic signature, otherwise the instruction is invalid. The superior prosecutor who issued the instruction is responsible for actions based on the instruction that became invalid. The instruction on withdrawing the matter must be justified in writing. The instruction on withdrawing a matter is made public.

(3) When appearing before a court of law, the subordinate prosecutor is not obliged to act under the superior prosecutor's instruction, provided that there is a change in the presentation of facts and proof in the court proceedings.

(4) The subordinate prosecutor is obliged to disobey the orders and instructions, provided that by obeying the same he would commit a crime, offence or any other tort, or a professional misconduct. The prosecutor's disobedience of the instructions must be duly reasoned in writing.

(5) The subordinate prosecutor may disobey the instructions, provided that by obeying the same he would directly and seriously put his life or health in a risk, or provided that by obeying the same he would directly and seriously jeopardise the life or health of a person close to him.

(6) Should the subordinate prosecutor assume that acting under instructions might result in a loss or damage, he is obliged to inform the superior prosecutor about the same.

(7) If the subordinate prosecutor deems the instruction to be contrary to law or to his legal opinion, he may submit a written request to the superior prosecutor that he should be disqualified from handling the matter. Such a request must be duly reasoned. The superior prosecutor shall grant his application and allocate the matter to another prosecutor or handle the matter himself.

(8) The superior prosecutor cannot issue an instruction to a subordinate prosecutor on not commencing a criminal prosecution, not raising charges, not submitting a motion for a custody of accused, to refer the matter to be dealt by a different body, to suspend a criminal prosecution, not to submit a prosecution or an ordinary or specific legal remedy against the accused.

(9) The superior prosecutor cannot issue an instruction to a subordinate prosecutor on not to submit a motion for the commencement of court proceedings, on not entering into the court proceedings, on not submitting a legal remedy against the court's decision pursuant to separate regulations, not to submit a prosecutor's protest or not to submit a notice of a prosecutor.

(10) The superior prosecutor cannot carry out or decide himself the acts in paragraphs (8) and (9) that cannot be instructed to subordinate prosecutor, nor he cannot decide that those acts would be carried out by another subordinate prosecutor. They may be directly carried out only by a superior prosecutor.

(11) The instruction to a European Delegated Prosecutor may be issued only in conformity with a separate regulation. In matters where the European Delegated Prosecutor performs tasks of the prosecutor of the Special Prosecutor's Office, this Act applies to the issuing of instruction to the European Delegated Prosecutor.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Regarding the professional and non-professional public, prosecutors present an independent position of the bodies of the Prosecutor's Office resulting from the constitutional position within the set of authorities of the State, namely in lectures, teaching activities via the Judicial Academy and other educational institutions, by publishing, participation in working groups within the legislative process, as well as by attending working meetings of the public bodies, other State authorities or the Police Force.

The educational activities supporting the awareness on the independence of the Prosecutor's Office are aimed for the legal trainees of the Prosecutor's Office.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

The media do not show interest in the decision-making process of international courts and treaty bodies regarding the independence of the Prosecutor's Office. They do not publish articles on this topic.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The Prosecutor's Office does not communicate with the broad public via media regarding this topic. The media is not interested in covering this topic, nor to develop a professional discussion or informing on the independence of the Prosecutor's Office via the interpretation of decisions of international courts and treaty bodies.

The decisions of international courts are reflected only in the decision-making process of the Prosecutor's Office and of the courts. They are published in professional legal literature or in networks of the judicial authorities.