

Slovenia / Slovénie

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

Adoption of new instruments/recomendations/regulations.

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?

A. Based on GRECO recommendations The State Prosecution Service Act was amended, and a Code of State Prosecutorial Ethics had been adopted. Based on these changes the Commission for Ethics and Integrity of the State Prosecutors' Council had started its work and adopted Clarifications to the Code of State Prosecutorial Ethics, Recommendations on conflict of interest, etc.

The Code of State Prosecutorial Ethics lays down rules for the official and private conduct and conduct of state prosecutors in order to safeguard the independence, impartiality and fairness of state prosecutors and the reputation of the state prosecutor's office.

B. In 2019 The National Council adopted a request for the parliamentary inquiry in order to investigate and establish the political responsibility of public officials; state prosecutors and judges involved in prosecution and trial in several cases of one politician for corruption offenses. As a result of such legislative branch's interference into the independence of the prosecution and judiciary, GRECO initiated an ad hoc procedure pursuant to Rule 34. GRECO points out that a parliamentary inquiry could interfere with the principle of separation of powers and would be a grave interference with the principle of independence, and also point to the respect for this principle in future similar procedures involving influential persons or holders of political power.

The Constitutional Court (on the initiative of the Supreme State Prosecutor's Office, the Supreme Court and the Judicial Council) suspended the execution of the parliamentary inquiry in the part concerning the state prosecutors and judges. The final decision has not yet been taken; the case is still pending.

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

See above.

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

The measures, described above, did not bring changes in the prosecution system.

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?

The Constitutional Court issued a ruling no. U-I-42/12 on 7 February 2013 as regards to the prosecutor's office. The Court said the State Prosecutor's Office is a system of self-dependent state bodies. Prosecutors perform their prosecution functions in the name of the

State and in the public interest. The Court stated that the independence of prosecutors must be ensured in concrete cases.

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The Constitutional Court (on the initiative of the Supreme State Prosecutor's Office, the Supreme Court and the Judicial Council) suspended the execution of the parliamentary inquiry in the part concerning the state prosecutors and judges. The final decision has not yet been taken; the case is still pending.

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

The position of the State Prosecution Service in Slovenia is specific. The Constitutional Court said the State Prosecutor's Office is a system of self-dependent state bodies.

The State Prosecution Service Act: The State Prosecutor's Offices shall be self-dependent state bodies within the system of justice.

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

Yes. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. Prosecutors perform their prosecution functions in the name of the State and in public interest.

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 State Prosecutors' Council is an autonomous state body that performs the tasks and duties of state prosecution self-governance and administrative tasks, and also participates in ensuring the uniformity of prosecution and safeguarding the autonomy of state prosecutors.

The State Prosecutors' Council is responsible for:

- the appointment and dismissal of the heads of district state prosecutors' offices,
- takes part in the appointment procedure of state prosecutors,
- gives opinions on prosecution policy, and
- is responsible for safeguarding autonomy in the performance of the state prosecution service.

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 State Prosecutors Council was established in 2011 and has nine members, who are appointed and/or elected for a mandate of six years.

Four members elected by state prosecutors from among the state prosecutors who do not hold leading posts, such that one each thereof holding the title of supreme state prosecutor, higher state prosecutor, district state prosecutor, and local state prosecutor are appointed;
Four members elected by the Parliament on the proposal of the President of the Republic from among legal experts;

One member appointed by the Minister from among the heads of District State Prosecutor's Offices.

The State Prosecutor General and the Deputy cannot be the members of the Council.

The prosecution policy or the debate within the judiciary does not have any significant impact on the election of the members of the Council of Prosecutors.

10. Who has the initiative of disciplinary proceedings?

The proposal for the institution of disciplinary proceedings can be filed by the head of the state prosecutor's office, the State Prosecutor General, the State Prosecutors' Council and the Minister. In this case the disciplinary prosecutor is not obliged to institute disciplinary proceedings. If the petitioner insists on such proposal, the disciplinary tribunal of first instance shall issue a final decision on whether or not to institute disciplinary proceedings.

A request for the institution of disciplinary proceedings can be filed by the State Prosecutor General, the State Prosecutors' Council and the Minister. On the basis of the filed written request referred to in the preceding sentence, the disciplinary prosecutor must request the institution of disciplinary proceedings.

Disciplinary sanctions are imposed on state prosecutors who violate their obligations either intentionally or as a result of negligence. But, even when disciplinary procedure is in place, it is not allowed to interfere with the state prosecutors' autonomy (when making decisions in a specific case/while performing their prosecution service). Also, state prosecutors may not be brought before a disciplinary tribunal for an opinion they expressed during the performance of the state prosecution service.

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

The position of a state prosecutor in Slovenia is a permanent position.

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

Yes. State prosecutors are officials engaged in an official employment with the Republic of Slovenia. They are equal to judges in terms of rights and obligations arising from their official service.

The main difference is regarding the appointment/election. The state prosecutor is appointed by the government on the proposal of Minister of Justice. The judges are elected by the parliament.

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?

No. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. They are also bound by the general principles of international law and by international treaties. State prosecutors who believe

that their autonomy was violated may request the State Prosecutor's Council to address the violation.

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

Decisions made by state prosecutors in individual cases may not be interfered with, except by way of general instructions and the re-assignment of cases in the manner defined by the State Prosecution Service Act. Each state prosecutor is as an independent state functionary and may not be given instructions or orders for his work in a specific criminal case.

General instructions on the conduct of state prosecutors relating to uniform application of the law and to guide and ensure the uniformity of prosecution policy are permitted. Such instructions are issued by the State Prosecutor General or the head of a district state prosecutor's office.

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?

Trainings and seminars on the independence of prosecutors have been organized (and more are planned in the future) within the Supreme State Prosecutor's Office and the Judicial Training Centre of the Ministry of Justice.

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

The national media reports are sometimes quite extensive and usually based on appropriate knowledge of the matter. On the other hand, some reports of media under the influence of particular political parties can be less objective or even (ab)used for individual political interests.

The launch of the above-mentioned parliamentary inquiry in 2019 has elicited wider media outreach due to the emphasis on investigating the political responsibility of judges and prosecutors. The critical responses of international organizations to the launch of a parliamentary inquiry (e.g. GRECO and OECD) have been extensively summarized and reported by the Slovenian media. In this regard, the media also reported violations of the rule of law under Article 2 TEU in other countries.

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?

In 2017 a Communication Strategy was adopted and published. Different communication tools are envisaged by the Strategy such as Internal Rules on Communicating with the Media, which provide recommendation on how state prosecutors should handle so as to provide timely information to the media whilst contributing to a better public image of prosecution services.

The public prosecutor organization strives to operate in a transparent manner and ensures regular communication with the public. Thus, the State Prosecutor's Office provides information on a particular topic to the public on its own initiative (press releases and as a publication on the website of a public prosecutor's organization) or provides it as a response to a specific journalistic question.

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

- a) of prosecutors;
- b) of the judiciary or the justice system as a whole;
- c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

We are not aware of such judgments or decisions.

Questions

IN YOUR COUNTRY:

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A. Based on GRECO recommendations The State Prosecution Service Act was amended in 2015 and a Code of Ethics for state prosecutors had been adopted. Based on these changes the Commission for Ethics and Integrity of the State Prosecutors' Council had started its work and adopted Clarifications to the Code of Ethics for state prosecutors, Recommendations on conflict of interest, etc.

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

In short, no.

From the Constitutional Court decision no. U-I-42/12: In Slovenia, state power is exercised on the principle of separation of power into legislative, executive and judicial branch of power.

Justice system in a broad sense includes and characterizes all those entities that are directly and permanently connected with the functioning of the judiciary (courts/judiciary and public prosecutor's office, attorney's office, notary). Justice system in the narrow sense, however, means only the judiciary. The functional connection of the public prosecutor's office with the judiciary derives from the Constitution, since the basic function of the public prosecutor's office is to file and represent criminal charges. However, understanding the public prosecutor's office as a part of the judiciary in the broad sense does not mean that the public prosecutor's office falls within the judicial branch of power. The State Prosecutor's Office does not belong to the judiciary as it does not exercise judicial function. Only the courts have judicial power, or only the judges exercise judicial power.

At the core of the prosecution function is the prosecution of offenders. Determining acts that are so reprehensible or that they damage such important goods that they should be classified as criminal acts, goes to the very core of the sovereignty of the state. That is why the public prosecutor's office exercises an important part of the state power. In a constitutional order in which the legislature passes laws defining criminal offenses and where the judiciary independently and impartially decides on the existence of the crime and the guilt of the alleged perpetrator, the prosecutorial function can only be an executive function. The prosecution of criminals is carried out on behalf of the state and in the public interest. In this respect, it is the prosecutorial function which, in addition to the police, most often demonstrates state power or state monopoly over the use of coercion. In this respect, it is one of the classic functions of state power. All this places the prosecutorial function in the executive branch of power.

But, although the prosecutor's office is considered to be part of the executive branch, it has a slightly different position from that of other state bodies in terms of its scope of activity within the executive branch. Within the executive branch, the prosecution is an autonomous body. The prosecutor's office must be professionally and politically independent from the administrative bodies. In our constitutional system, the public prosecutor's office is not an authority that could be subordinated to the executive branch of power. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. With regard to the exercise of the public prosecutor's function, the public prosecutor is not such a part of the executive power which in specific cases could be directed by the government or any ministry in terms of political and professional instructions.

6.1. Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

The Constitution of the Republic of Slovenia

The Judiciary:

Article 125: Judges shall be independent in the performance of the judicial function. They shall be bound by the Constitution and laws.

Article 129: The office of a judge is permanent. The age requirement and other conditions for election are determined by law. The retirement age of judges is determined by law.

Article 130: Judges are elected by the National Assembly on the proposal of the Judicial Council.

Article 134: No one who participates in making judicial decisions may be held accountable for an opinion expressed during decision-making in court.

If a judge is suspected of a criminal offence in the performance of judicial office, he may not be detained, nor may criminal proceedings be initiated against him without the consent of the National Assembly (immunity).

The State Prosecutor's Office:

Article 135: State Prosecutors file and present criminal charges and have other powers provided by law.

The State Prosecution Service Act

Article 3: In the performance of the state prosecution service, state prosecutors shall be autonomous and bound by the Constitution and an Act. In accordance with the Constitution, state prosecutors shall also be bound by the general principles of international law and by ratified and published international treaties.

Decisions made by state prosecutors in specific cases may not be interfered with, except by way of general instructions and the assignment of cases in the manner defined by this Act

Article 5: The office of state prosecutor is permanent. (The age requirement and other conditions for election are also determined by this Act.)

Article 34: State prosecutors are appointed by the Government on the proposal of the Minister.

The first paragraph of Article 135 of the Constitution implicitly contains the principle of functional independence of state prosecutors with regard to the filing and presentation of criminal charges. The Constitution does not guarantee state prosecutors independence in such content as judges. The requirement for the independence of judges derives directly from the principle of separation of powers.

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

Yes. In the performance of the state prosecution service, the prosecutors are autonomous and bound by the Constitution and the Law. Prosecutors perform their prosecution functions in the name of the State and in public interest. (see also answer no. 6).

In the case of public prosecutors, the request for their independence can be justified on the basis of the principle of separation of powers, but - given that the public prosecutor's office falls within the executive branch of power - only in relation to the legislative and judicial branches (in relation to other bodies of the executive branch of power, their independence or autonomy does not stem from the principle of separation of powers).

As already explained, the public prosecutor's office in our constitutional system cannot be viewed as an authority that could be subordinated to the executive branch of power, since it is a (functionally) independent body. The decision on whether to bring a criminal charge to court and how to represent it in court is up to the public prosecutor. In doing so, the public prosecutor must, in concrete procedures, respect the principle of equality before the law and proceed from the adopted policy of prosecuting offenders. However, it is the public prosecutor who is competent to decide, within the constitutional and statutory framework, whether to file a criminal charge and how to represent it; this decision must be his own decision, which he must make conscientiously and in his best professional judgment. This is not his right, but his jurisdiction, and thus his duty and responsibility in the performance of the state prosecutor's office.

7.1. Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

Yes.

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 State Prosecutors' Council is an autonomous state body that performs the tasks and duties of state prosecution self-governance and administrative tasks, and also participates in ensuring the uniformity of prosecution and safeguarding the autonomy of state prosecutors.

The State Prosecutors' Council is responsible for:

- the appointment and dismissal of the heads of district state prosecutors' offices,
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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?

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The State Prosecutor General and the Deputy cannot be the members of the Council.

The prosecution policy or the debate within the judiciary does not have any significant impact on the election of the members of the Council of Prosecutors.

10. Who has the initiative of disciplinary proceedings?

The proposal for the institution of disciplinary proceedings can be filed by the head of the state prosecutor's office, the State Prosecutor General, the State Prosecutors' Council and the Minister. In this case the disciplinary prosecutor is not obliged to institute disciplinary proceedings. If the petitioner insists on such proposal, the disciplinary tribunal of first instance shall issue a final decision on whether or not to institute disciplinary proceedings.

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Decisions made by state prosecutors in individual cases may not be interfered with, except by way of general instructions and the re-allocation of cases in the manner defined by the State Prosecution Service Act. Each state prosecutor is as an independent state functionary and may not be given instructions or orders for his work in a specific criminal case.

General instructions on the conduct of state prosecutors relating to uniform application of the law and to guide and ensure the uniformity of prosecution policy are permitted. Such instructions are issued by the State Prosecutor General or the head of a district state prosecutor's office.

14.1. What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

The allocation of cases to state prosecutors is regulated by the State Prosecution Service Act and in more details in the State Prosecutors' Rules. It is based on objective and transparent criteria.

As a rule, cases are allocated to state prosecutors in the order of their receipt, taking into consideration the organisation of work, specialised legal fields and an even workload distribution. The rules for the allocation of cases and implementation of procedural tasks is defined in detail by the annual work schedule in accordance with the State Prosecutors' Rules.

The case in which directing of the police or investigative tasks were performed during the on-call duty is generally allocated to the public prosecutor who participated in the investigative task or directed the pre-trial procedure.

If a state prosecutor is released from a case and the case is re-allocated, the head of the state prosecutor's office issues an order on the re-allocation of the case either to another state prosecutor whose turn it is to take on a case in accordance with the annual work schedule, or to themselves for consideration.

The case may also be allocated to another state prosecutor in the event of a longer absence, in the event that the state prosecutor is burdened with other extensive and legally complex matters, for reasons of exclusion, etc.

Depending on the nature and complexity of a specific case, the head of the state prosecutor's office can designate the state prosecutors and the legal staff that will cooperate with the state prosecutor to whom the case has been allocated under the team-work principle, and defines the extent and manner of their cooperation.

The head of a district state prosecutor's office may take over a specific case or task which has been assigned to a state prosecutor at that state prosecutor's office for consideration or may reassign such case or task to another state prosecutor (re-allocation of a case).

The reasons substantiating the re-allocation of a case are:

- disagreement in substantive terms with the decision and/or reasons for the decision of the state prosecutor with respect to the established prosecution policy;
- suspicion of serious irregularities or unlawfulness in the case resolution process;
- unconscientious, late, inadequate or negligent case resolution process;
- acting in contravention of the general instructions issued pursuant to the provisions of the State Prosecution Service Act;
- other actions meeting the criteria of disciplinary violations under the State Prosecution Service Act committed in the process of case resolution.

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?

Trainings and seminars on the independence of prosecutors have been organized (and more are planned in the future) within the Supreme State Prosecutor's Office and the Judicial Training Centre of the Ministry of Justice.

15.1. Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

Based on GRECO recommendations The State Prosecution Service Act was amended in 2015. Among other, new articles have been added to specify the obligation to adopt the Code of Ethics. The Code of ethics for State Prosecutors shall lay down the rules of professional and private conduct of state prosecutors with a view to protecting their autonomy, impartiality and integrity, and the reputation of the state prosecutor's office. The Code of Ethics is adopted by the State Prosecutors' Council, which also appointed the Commission for Ethics and Integrity of the State Prosecutors' Council. The Commission already adopted Clarifications to the Code of Ethics for state prosecutors, Recommendations on conflict of interest, etc.

The Code of Ethics in English is available here: <https://www.drzavnotozilski-svet.si/code-of-ethics-of-state-prosecutors>

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

The national media reports are sometimes quite extensive and usually based on appropriate knowledge of the matter. On the other hand, some reports of media under the influence of particular political parties can be less objective or even (ab)used for individual political interests.

The launch of the above-mentioned parliamentary inquiry in 2019 has elicited wider media outreach due to the emphasis on investigating the political responsibility of judges and prosecutors. The critical responses of international organizations to the launch of a parliamentary inquiry (e.g. GRECO and OECD) have been extensively summarized and reported by the Slovenian media. In this regard, the media also reported violations of the rule of law under Article 2 TEU in other countries.

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?

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