

## General background

### Historical overview and future vision of investigation in the Slovak Republic

The 2001 Accession Partnership for the Slovak Republic sets a number of priority objectives to be achieved in the fields of fight against corruption and organized crime, including the need to ensure the accountability and transparency of investigation procedures, better coordination between the services and agencies involved, and the intensification of law enforcement bodies staff training (including police officers and prosecutors).

In the Monitoring Report published on 5 November 2003, the European Commission highlights the need to pursue the building up of efficient and reliable judiciary and police organization that meet the standards of administrative capacity. In particular, the Report states: "Continuous attention is needed concerning co-operation and co-ordination between the police and the prosecuting and judicial bodies as well as rationalization of tasks and competences between the Police and the Judicial Police".

### Police Forces and the tasks of the Presidium of the Police Corps

The Police Corps is managed by the Ministry of Interior of the Slovak Republic and according to the law it is an armed security corps with duties in the field of internal order, security, and fight against crime, including organized and international crime. It also has other tasks in coherence with international affairs.

The activities of the Police Corps are controlled by the Slovak parliament and the Slovak government. The Police Corps is legally governed by the Constitution, laws, regulations and international agreements.

A separate part of the Ministry of Interior is the Presidium of the Police Corps. At the head of this authority is the President of Police, who manages the Presidium and the directors of regional police directorates. He is responsible for the tasks of the Presidium and is directly accountable to the Minister of Interior.

The main activity of the Police Corps is the protection of citizens' rights and liberties. The basic principles are: the right of life, the inviolability of the person, property and privacy. This has a strong link to the right of personal and property security.

Investigation is part of police work, incorporated in the activity of many special police departments. It belongs to the pre-trial stage of the criminal procedure. The activities of investigators are performed in strict compliance with the Code of Criminal Procedure. Most investigation tasks in the police sector are

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performed by the Office of Judicial and Criminal Police, a central part of the Presidium of Police Corps.

## **Office of Judicial and Criminal Police**

The Police Corps has adopted a new organizational structure. Since January 2004 investigators have joined criminal detectives and a separate authority, the Office of Judicial and Criminal Police was set up. Its director is accountable to the first vice-president of the Presidium of the Police Corps.

The Office of Judicial and Criminal Police issues methodological directions to be used by Police Corps, divisions where investigators or investigating police officers operate.

The investigators of the Office of Judicial and Criminal Police, exercise control of the status quo and quality of the investigation of individual criminal acts by the offices of the judicial and criminal police at the regional police directorates and at district level (district directorates) and recommend in a written form to the investigator or investigating police officer the execution of concrete investigation acts for examination of the status quo or for removing procedural errors. The investigators of the offices of judicial and criminal police at the regional directorates have similar functions.

Investigators at regional offices investigate crimes punishable by at least 8 years of imprisonment or by “extraordinary punishment” (25 years of imprisonment or a life sentence).

The procedures of investigation and summary proceedings (newly introduced from 1 January 2004) is established in Law No.141/1961 – Code of Criminal Procedure. The Code of Criminal Procedure is the only law governing the procedures of investigation. According to this law the investigation is executed by an investigator of the Police Corps while summary proceedings are executed by the police authority.

The police authority is defined as the responsible authority of the Police Corps. In the sense of Art. 12 of the Code of Criminal Procedure an equal status as a police authority of the police corps is assigned to:

- the responsible authorities from the Military Police for investigation of criminal acts of army personnel;
- the Prison and Justice Guard for criminal acts of the officers of this Guard and criminal acts of the imprisoned persons;
- the responsible authorities from the Railway Police for criminal acts of the officers of the Railway Police and acts committed in proximity to railway sites;
- the customs authorities in case criminal activity against customs legislation and the authorized tax office, of criminal activity violating tax legislation; and

- the captains of ships for criminal acts committed on board of ships.

## Investigation procedure

Article 12 of the Code of Criminal Procedure establishes the status of the investigator and the police authority as the law enforcement agent executing the investigation (Art. 161). According to Art. 164 of the Code the investigator and police authority work on their own initiative so that all facts important for the judgment of the case are clarified as soon as possible, including the identification of the perpetrator and the results of the criminal acts. Excluding the acts where a prosecutor's agreement is needed, all decisions of the investigators and police authority about the procedure are done independently and both authorities are responsible for the legal and timely execution of it.

An investigation is not held when summary proceedings have to be applied but the accused person is momentarily in investigative jail, in the prison or held for an examination at a health institution; if the case is led against minors, persons that are missing or against a person that is officially not responsible or with limited responsibility; and in cases when there is physical or mental disability of such a person or possibility of mental disease; or in cases of prosecutors' order. The same applies to the parallel existence of criminal acts if the investigation must be executed minimally for one of this parallel acts. The procedures done before the start of the punishment should not be repeated by the investigator and police authority, if it was executed in coherence with the actual chapter of the Code of Criminal Procedure. In this way the duplicity of execution has been removed.

Summary proceedings are designated for the criminal offences punishable by imprisonment for up to three years. Summary proceedings are performed by the police authorities included in the police force units at district level. A significant change in relation to the police authority is its authorization to bring a charge in matters where the police authority is competent to act.

Under the Code of Criminal Procedure, summary proceedings are to be ended not later than two months after bringing a charge. If summary proceedings are not concluded within this period, the prosecutor may order investigation if circumstances demand it. The Code of Criminal Procedure does not lay down any time period for termination of investigation. The police force investigator and the police authority proceed during his/her investigation upon their own initiative to clarify all the facts important for reviewing the case, including the perpetrator and the crime consequences, within the earliest possible time and to a proper extent. Their further procedure is laid down in the act as follows "if the prosecutor or police authority considers the investigation concluded and its consequences sufficient to make a charge...". Two months for termination of summary proceedings is the only time period mentioned in the act and even, after expiration of this time, the prosecutor may order investigation. In the cases of custody investigation, the time periods are determined according to the length of custody.

In the course of investigation the investigator and the police authority collect evidence for examining the case, the perpetrator, the right of the person aggrieved for damage compensation, as well as the reasons leading to committing

the crime. He/she must ensure that the investigation is without detriment as to quality, observe the legality and effectiveness of the procedure and its completion within the earliest possible time.

A significant change concerns the commencement of criminal prosecution because if the notification does not include the facts excluding the perpetration of crime, the investigator or the police authority are due to initiate the criminal prosecution without any delay. Only in the cases in which the notification is to be completed, the investigator or the police authority must complete it without delay and initiate the criminal prosecution not later than thirty days after the receipt of notification.

After completion of investigation, unless agreed otherwise, the investigator or the police authority submits to the prosecutor the documents of the case with the proposal to bring a charge or with the proposal to end the criminal investigation or approve reconciliation on probation. After receiving the documents, the prosecutor shall get acquainted with the file and review if the evidence is sufficient to bring a charge. If the results of the investigation justify the bringing of the defendant to court, the prosecutor shall bring a charge.

As to the observation of legality, the prosecutor is empowered to give binding instructions both to the investigator and the police authority. He is empowered to examine if the investigator or the police authority initiates the criminal procedure on time, to participate in the investigator's or the police authority's execution of operations and to cancel illegal or unfounded decisions and measures taken by the investigator and the police authority and replace them with his own decisions. He is empowered to withdraw the case from the investigator or the police authority and assign it to another investigator. In case of summary proceedings, he may order to perform investigation, if circumstances require it.

The prosecutor's status and supervision powers before the commencement of criminal procedure and in preliminary procedure were strengthened, and he is exclusively empowered to supervise the observance of legality in the investigator's and the police authority's activities, even before the commencement of criminal procedure.

Control and transparency of individual investigative operations and the overall investigative procedure is provided by individual measures stipulated in the Code of Criminal Procedure, in particular by means of supervision of the prosecutor over the observance of legislation before the commencement of criminal prosecution and in preliminary procedure and by means of the parties in the criminal proceedings which may actively interfere with the investigative procedure through their proposals.

The principal legal document amending the position of the Office for Justice and Criminal Police is the Act on the Police Force. As amended by Art. 2, Par. 1, item d) the task of the Police Force performs the investigation and summary proceedings of crimes under the Code of Criminal Procedure. The special position of investigative authorities (investigators and the police authority) is envisaged in the Code of Criminal Procedure (Art. 161).

The legal status of investigator of the Police Force who ensures the fulfillment of the tasks in the area of investigation and protection of rights and freedoms of all

persons participating in preliminary criminal procedure is also derived from the legal status of the offices.

Under Art. 34 of Act No. 73/1998 Coll. on Civil Service of the Police Force Members, of the Slovak Information Service, the Corps of Prison and Judicial Guard of the Slovak Republic and the Railway Police, as later amended, the policeman is designated as the investigator by the Minister of Interior. The policeman designated for investigator may only be a person who:

- has a master degree in the area of law or security services;
- has passed the relevant final investigation exam.

If the condition of education required is not met, the minister may exceptionally designate the police officer as the investigator, if the latter has a master degree in a different area and has successfully passed the relevant investigation exam.

According to Art. 164, Par. 4 of the Penal Code the investigator or the police authority takes all the decisions on the investigative procedure and operations independently and is fully responsible for their legal and timely execution, with exception of the cases in which the approval of prosecutor is needed.

The investigator's status and the tasks are governed by Act No. 171/1993 Coll. on the Police Force as later amended. The investigator is, in the cases being investigated by him, procedurally independent and is bound only by the acts and other generally binding legal regulations of prosecutor and court to that extent which is covered by the Code of Criminal Procedure (Art. 7, Par. 7).

Concerning the cases he investigates, he is empowered to ask the Police Force to perform operations needed for the investigation which he is not able to provide by himself owing to the nature of these operations, in compliance with acts and other generally binding legal regulations.

The investigator in investigations and the police authority in summary proceedings are procedurally dependent only on the Constitution, constitutional acts, acts and other generally binding regulations, international treaties signed by the Slovak Republic, to the extent described in the Code of Criminal Procedure and the instructions and orders of the prosecutor and the court.

### **Other investigation authorities**

The Bureau for the Fight against Organized Crime deals with investigations of serious organized crime committed by the organized and terrorist groups, e.g., terrorism, racism, extremism, drugs, trafficking of persons and their sexual exploitation, illegal business with nuclear material and weapons, as well as serious violation in the area of tax frauds, legalization of the profits from criminal activity, illegal financial operations on the capital and financial market and financing of the terrorism on the territory of Slovak republic.

The Bureau for the Fight against Corruption performs investigations of criminal groups, serious economic crime and cases in the competence of the

“special prosecutor” (corruption among elected or appointed officers of the state administration, embezzlement of property and financial funds related to, international donations and state reserves, activity of banks and normal performance of the banking system, illegal financial operations).

The Bureau of the Border and Alien Police of the Presidium of Police Corps performs investigation of illegal border crossing or people trafficking.

All in all, the methodological activity of the Office of the Judicial and Criminal Police is a significant tool of the Presidium of Police Corps, it is mainly targeted at identifying errors in the process of investigation, at proposing effective measures for higher quality of the investigation and at unification of the investigation approaches to the various types of criminal activity.