

### **General features**

The Public Prosecution Office shall protect the rights and interests guaranteed by law to individuals, legal entities and the state (article 149 of the Constitution of the Slovak Republic). Within the scope of its power, the Public Prosecution Office is obliged in public interest to take the measures in order to prevent, identify and disclose any breach of law and eliminate it, remedy any violation and impairment of rights and draw appropriate conclusions. When exercising its powers, the Public Prosecution Office is obliged to use all the statutory means available to secure impartial, consistent, effective and prompt protection of the rights and interests guaranteed by law to individuals, legal entities and the State.

### **Public Prosecution of the Slovak republic**

The Public Prosecution of the Slovak Republic is an independent governmental authority which defends the rights and interests protected by law of individuals, legal entities and the state. It has its own budget within the state budget of the Slovak Republic. It is also a hierarchically organized unified system headed by the Prosecutor General of the Slovak Republic in which the individual prosecutors act in terms of subordination and superiority. The position and the competence of the Public Prosecution of the Slovak Republic and the position of the Prosecutor General are regulated by article 149 of the Constitution and by the Public Prosecution Act No: 153; the position of prosecutors and their rights are provided for in Act No. 154/2001 COll.

The Public Prosecution is obligated to take measures to prevent, find out and eliminate the law violation, restore the violated rights and lay appropriate charges.

The Public Prosecution of the Slovak Republic has decision-making, supervising and control powers.

### **Position of the Prosecutor General**

The Prosecutor General is at the head of the Public Prosecution. He or she is appointed and recalled by the President of the Slovak Republic on the basis of a proposal of the National Council of the Slovak Republic for a period of five years and maximum two consecutive mandates. He or she is a constitutional official heading a central authority of the Slovak Republic.

The Prosecutor General's instructions and orders as acts on organization and management are generally binding upon the Public Prosecution of the Slovak Republic.

---

<sup>49</sup> Mr. Alexander Kunosik is State Counselor in the Criminal Legislation and Criminal Prevention Section of the Criminal Law Department in the Ministry of Justice of the Slovak Republic. He holds a LL.M degree from the Law Faculty of the University of Comenius in Bratislava. He is Legal Correspondent of the European Legal Database on Drugs (ELDD).

## Entitlements of the Prosecutor General

In the area of criminal law, he or she is entitled to contest the final decision of any criminal proceeding authority, including the court. He or she can also contest the decision of the civil court by an extraordinary admissible review. The Supreme Court of the Slovak Republic makes decisions concerning these reviews.

The Prosecutor General is entitled to nominate judges for the Constitutional Court. He or she can address the Constitutional Court in case he/she considers any law or generally binding decision of a public administration authority contradicts the Constitution of the Slovak Republic. He or she has no legislative initiative, but can initiate amendments to the existing laws or adoption of new ones through the Chairman of the Parliament. When invited, he or she is obliged to participate in the plenary session of the Parliament or its committees. Once a year he or she has to submit to the Parliament a report on the Public Prosecution activities. The Members of Parliament are not entitled to interpellate the Prosecutor General.

The Prosecutor General can take part in the sittings of the government with a consultative vote. The Government cannot order the Prosecutor General to fulfill a particular task, it can only recommend or ask him or her to do so.

## Public prosecutor

The person to be appointed public prosecutor must be an impeccable citizen of the Slovak Republic with permanent residence in its territory who is at least 25 years old, has made practice training during the determined period of time, has passed successfully the prosecutorial examination and has sworn before the Prosecutor General.

## Tasks of the public prosecutor

The powers of the Public Prosecution Office are exercised by the individual prosecutors through:

- a. the pursuit of criminal proceedings conducted against individuals suspected of having committed crimes and through overseeing compliance with laws in the pre-trial proceeding;
- b. overseeing compliance with laws in all the establishments where the individuals deprived of their personal freedom or the individuals whose personal freedom was limited upon a decision made by a court of law or by any other competent authority are kept;
- c. exercising their powers in the court proceeding;
- d. representing the state before the courts of law if so prescribed by a separate law;
- e. overseeing compliance with laws on the part of public administrative agencies;

- f. participation in preparing and taking preventive measures which aim to prevent a breach of laws and other generally binding regulations;
- g. participation in eliminating, preventing and combating the causes and conditions of crime;
- h. participation in drafting legislation;
- i. performing other duties and obligations if so prescribed by a special law or by an international treaty declared in the manner prescribed by law;
- j. filing an instigation of civil trial or entering a civil trial already initiated concerning declaration of somebody's death, education of minors, registration in the Company Register, bankruptcy, etc.

The prosecutor shall not express any interpretative views or opinions on laws to other bodies or to any other legal entities and individuals.

The prosecutor shall perform his duties and obligations in accordance with laws and when doing so he shall use all the statutory means available. When performing his duties and obligations, the prosecutor must:

- a. to his best knowledge abide by and apply the Slovak Republic Constitution, constitutional laws, laws, international treaties declared in the manner prescribed by law and other generally binding regulations,
- b. respect and protect human dignity, fundamental human rights and freedoms and avoid any discrimination whatsoever,
- c. protect public interest,
- d. always act fairly, impartially and without any undue delays.

The public prosecutor fulfills his or her tasks by legal proceedings against the persons which are under suspicion of committing a crime and by supervising the legality of preparatory proceedings, during which he or she is entitled to give binding instructions to the investigators, require the report of the course of investigation, participate in acts carried out by investigators and make decisions in any case connected with. Only the public prosecutor is entitled to bring an action against a person, order the property seizure of the accused, give an exhumation warrant and carry out a preliminary investigation in proceedings connected with extraditions. He supervises the legality of laws and regulations restricting the individual's liberty. He represents the state as a proprietor in legal proceedings, supervises the legality of acts and decisions of the state or local authorities and other legal entities in the extent they were authorized by law to make decisions of the rights and duties of individuals and legal entities in the sphere of the public administration, participates in measures aimed to prevent the violation of law and other generally binding regulations and to eliminate the causes and conditions for criminal offences, participates in consultative committees for the creation of laws for or crime prevention and suppression.

The public prosecutor does not provide interpretation of the laws to other authorities, legal entities or individuals and does not provide solicitor services.

The military prosecutor carries out the criminal prosecution against members of the armed forces, who have committed crime, and supervises the legality of preliminary criminal proceeding against members of the armed forces.

The Office of the Prosecutor General of the Slovak Republic keeps a Criminal Register and gathers, processes, keeps and gives information about persons lawfully convicted in criminal proceedings, persons against whom the prosecution was lawfully conditionally discontinued and the agreements concluded in criminal proceedings.

### **Entitlements of the public prosecutor**

The public prosecutor is entitled to inspect the legality of generally binding decrees of municipalities, amendments, resolutions and other legal acts issued by the public administration authorities. He or she is entitled to inspect the legality of procedures and decisions of the public administration authorities in particular cases.

The public prosecutor may challenge the generally binding decrees of municipalities, other legal acts and decisions of the public administration authorities issued in particular cases, if they violate the law or other generally binding regulations, before the authority which has issued this unlawful decision or before its superior authority. The public prosecutor suggests to the public administration authorities or to their superior authorities to correct the violation.

The public prosecutor is excluded from the inquiry and decision making of the case, if due to his or her relationship to the case, to the parties of the proceeding or to their barristers, there are doubts that he or she may be prejudiced.

### **Organizational structure of the public prosecution**

The organizational structure of the public prosecution corresponds to the organizational structure of the courts of the Slovak Republic.

### **System of the Public Prosecution Office**

The public Prosecution Office consists of the following units:

- a. the General Prosecution Office of the Slovak Republic, which is the supreme body in the system of public prosecution – a part of it deals with corruption and organized crime and another part of it – with military prosecution;
- b. 8 regional prosecution offices which are the superior authorities of the district public prosecution offices in their territory;
- c. the High Military Prosecution Office;
- d. 55 district prosecution offices;

- e. circuit military prosecution offices.

The hierarchical organization of the Public Prosecution Office is an indispensable condition for the proper work of Public Prosecution as a law protection authority. It enables a uniform application of laws and other generally binding legal regulations as well as uniform invocation of criminal policy. Within the organization the individual prosecutors are subordinated to the superior prosecutors who are subordinated to the Prosecutor General. The superior prosecutor is competent to issue instructions how to proceed or to decide.

A superior prosecutor shall have the right to:

- a. instruct his subordinate prosecutors how to proceed with handling the matter and how to perform their tasks,
- b. exercise the powers originally vested in a subordinate prosecutor or decide that the aforesaid powers will be exercised in the acts of another subordinate prosecutor.

The instruction given to the subordinate prosecutor shall always be in writing. The subordinate prosecutor is obliged to act under instruction if not otherwise provided.

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 facts or evidence presented in the court proceeding.

The subordinate prosecutor is obliged to disobey the orders and instructions, provided that by obeying the same he would commit a crime, offence or tort or provided that his activity could be considered a professional misconduct; the prosecutor's disobedience of the instructions and orders must be duly reasoned in writing.

The first instance is represented by 55 district public prosecutions and the second instance by 8 regional public prosecutions. The judge-advocate department operating in the Slovak Republic Forces is a part of the public prosecution of the Slovak Republic. It is represented by 3 district judge-advocate departments of the first instance and a higher-level judge-advocate department of the second instance.

The organization of the courts and prosecution offices does not correspond to the division of territorial administration units of the state on the district level.

The basic salary of prosecutors corresponds to the salary of judges. The Board of Prosecutors of Slovak Republic is their coordination body, which consists of chairmen of the respective Boards of Prosecutors.

### **Staff of the Public Prosecution Office in Slovak Republic in 2000**

According to the planned number, 728 prosecutors, 689 technical-administrative employees and workers work in the Public Prosecution Office in Slovak Republic

(except the military section of the Public Prosecution Office). This state was achieved after reducing the number of employees in compliance with the Act No. 63/1999 Coll. on the state budget for 1999 and Annex No. 1 of Government Resolution No. 141/1999. The actual number of technical-administrative staff and manual workers in the Public Prosecution Office was in compliance with the planned state for 2000. In 2000, a total of 645 prosecutors worked in the Public Prosecution Office, i.e. 88,59% of the planned number. The planned number of prosecutors hasn't been changed since 1990, even though the registered crime is rising and becoming more serious. 83 prosecutors are needed to reach the planned number, 11 less than 1999 when 94 prosecutors were missing. 15 prosecutors are on maternity leave, 3 prosecutors are doing their military service and two have been removed from office, so that the Public Prosecution Office is currently short of 103 prosecutors capable to work. There are 310 women (48,06%) among the 645 prosecutors.

In the year 2000 a total of 14 prosecutors left the Public Prosecution Office (4 prosecutors left their work for disability reasons, 4 prosecutors died, 6 left for another employment).

By 31 December 2000 there were a total a 93 trainee-prosecutors in the Public Prosecution Office of the Slovak Republic, including 8 trainee-prosecutors doing their military service and 5 trainee-prosecutors on maternity leave. 26 trainees, 12 of whom women, were appointed prosecutors.

The interest for the profession is on the rise and 240 applications were sent in 2000 to the Public Prosecution Office of the Slovak Republic. Only 40 applicants were accepted. Regarding the selection, even intellect and personality are considered besides knowledge of law and language proficiency.

A total of 118 positions were planned within the Military Section of the Prosecution Office in the year 2000, of which 68 for professional soldiers and 50 for civil employees. In reality 46 jobs were occupied by professional military officers (67,6%). The positions of the civil employees are currently fully occupied. 30 prosecutors were appointed instead of the planned 41, that is 73%. In 2000, 4 trainee-prosecutors were working in the Military Section of the Prosecution Office too. Compared to 1999 when the number of military prosecutors was 27, their member has increased by three prosecutors passing the prosecutor's exam in Banská Bystrica, Bratislava and Prešov.