

## ORGANIZATION AND STRUCTURE OF THE STATE PROSECUTOR'S SERVICE IN THE REPUBLIC OF SLOVENIA

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### Introduction

Following the 1995 judiciary reform on the basis of the State Prosecutor's Office Act amendment and all other amendments of this act, thorough changes were made to the State Prosecutor's Office of the Republic of Slovenia. The Slovenian Constitution has a special chapter dedicated to the State Prosecutor's Office, immediately following the chapter concerning the administration of justice. On the basis of the Constitution as well as on a Constitutional Court judgment, the State Prosecutor's Office is defined as a *sui generis* body, and as an independent state body. Based on provisions stipulated in the State Prosecutor's Office Act, it is defined as an independent body being a part of the judiciary. Although many might like to see it within the executive branch of government, it falls, due to its nature, organization and performance of its powers, within the judiciary.

The main change that the 1995 reform brought was that the State Prosecutor's Office, previously featuring a strict hierarchy and strict respect for subordination, was now reshaped into an institution where the performance of the powers of the State Prosecutor's Office was passed on to the level of an individual – to state prosecutors as judiciary officers of different levels and no longer as an institution. Thus the state prosecutors are independent in their work and decision making process and are bound only by the Constitution and law. When deciding on a matter, neither state prosecutors of a higher rank, nor heads of District State Prosecutor's Offices, nor a State Prosecutor General can influence the decision of a state prosecutor with any kind of instructions whatsoever. In this respect, the status of a state prosecutor has much approached the status of a judge.

The requirements, position and rights of a state prosecutor as well as his/her salary are identical with the requirements for the appointment, rights and salary of judges of the same rank, while the State Prosecutor's Office Act, in the relevant chapters, largely refers to the provisions of the Judicial Service Act.

Since 1995 the state prosecutors of the Republic of Slovenia have had permanent tenure. State prosecutors – with the exception of the State Prosecutor General who is appointed by the National Assembly of the Republic of Slovenia – are appointed for permanent tenure by the Government of the Republic of Slovenia (while judges with permanent tenure are appointed by the National Assembly).

### Organization and structure of the State Prosecutor's Office

The powers vested in state prosecutors are, in the Republic of Slovenia, carried out by prosecutors at three instances: district state prosecutor, higher state prosecutor and the supreme state prosecutor. The powers of these are based upon the powers vested in them by the State Prosecutor's Office Act and other laws. In addition to the state prosecutors of the above defined three instances, the

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state prosecutor's office is also carried out, in particular at the first instance, by assistant state prosecutors (district and higher), whose powers do not originate in the Act, but rather in an individual power-of-attorney given by a state prosecutor to whom the assistant has been assigned. The number of the assistant district state prosecutors is significantly lower than the number of the state prosecutors themselves. The assistant district state prosecutors also have a permanent appointment and are appointed by the Government of the Republic of Slovenia by the same procedure as state prosecutors. Assistant state prosecutors' salaries are harmonized with those of local court judges. In addition to the assistants, the state prosecutors are also assisted by specialist staff – graduate lawyers who have passed the bar examination, and other suitably qualified staff. Only state prosecutors and their assistants within their powers-of-attorney granted, can act during the preliminary procedure and in the court criminal proceedings.

The powers of state prosecutors particularly depend upon the following three circumstances: the state prosecutor's position, the office in which they work and before which court they can act, which means that they have to respect territorial and subject matter jurisdiction of the court and state prosecutor's office to which they have been appointed or assigned to work.

Taking into account the above-mentioned circumstances, as a rule the supreme state prosecutors can act before the law courts of all instances in the Republic of Slovenia, the higher state prosecutor before the local, district and higher courts, and the district state prosecutor before the local and district law courts. The latter have the exclusive competence to decide upon all criminal matters at the first instance courts (the local courts for criminal offences for which a penalty of up to 3 years of imprisonment is prescribed, and the district courts for all other criminal matters).

The organization of the Slovenian State Prosecutor's Office is unified and does not distinguish specialized state prosecutors, e.g. military or other specialized state prosecution, while the organization is divided into two types of state prosecutors' offices, i.e. 11 district state prosecutor's offices and the supreme state prosecutor's office. The latter comprises 4 internal departments: criminal, appellate, revision, and the department for civil and administrative matters. It also comprises three external departments, held by higher state prosecutors who defend appeals before the higher courts in Maribor, Celje and Koper. Within the Supreme State Prosecutor's Office of the Republic of Slovenia, there is also a legal information centre and a specialist centre in order to ensure specialist assistance in the field of taxation, finance and accounting. There is also a Group of prosecutors for special matters operating within the Slovenian Supreme State Prosecutor's Office whose task is to handle complex cases of various types of criminal offences with elements of organised crime. State prosecutors of various ranks may be assigned to work in the Group of prosecutors for special matters, and their appointment is for a period of 6 years.

In the Republic of Slovenia there are, in the first instance, state prosecutors who have been appointed or assigned to work in a district state prosecutor's office, and they appear before the first instance courts within the territorial jurisdiction of a specific state prosecutor's office, as well as those state prosecutors appointed to work in the Group of prosecutors for special matters who appear before the first instance courts in the territory of the entire Republic of Slovenia.

At the second instance, state prosecutors of the appellate department of the Supreme State Prosecutor's Office of the Republic of Slovenia of the head office, as well as three external departments, appear before the four Higher Courts.

At the third instance there are supreme state prosecutors of the Slovenian Supreme State Prosecutor's Office, who appear before the Supreme Court of the Republic of Slovenia.

The state prosecutors are completely independent in the decision-making process and are bound only by the Constitution and the law. However, even though there are no obligatory instructions for dealing with specific criminal matters, the state prosecutors have to follow the general instructions of the State Prosecutor General which refer to the uniform application of the law and unification of prosecution policy, as well as the obligatory instructions concerning the state prosecutor's office issued by the head of the relevant state prosecutor's office within the framework of their powers.

State prosecutors are responsible for their work and their work is subject to regular expert inspection. The inspection may be carried out by the head of the relevant state prosecutor's office within the framework of their authorities. However, it is also regularly inspected by the Supreme State Prosecutor's Office of the Republic of Slovenia by auditing the work of district state prosecutors' offices, by inspecting the court records and pointing out errors made. However, complaints about the work of state prosecutors can also be filed by parties taking part in criminal proceedings and others.

Judiciary inspection of the work of the District State Prosecutor's Office and the Supreme State Prosecutor's Office may also be carried out by the Ministry of Justice. Their inspection includes the work of the head-office of the State Prosecutor's Office, statistical data and other data collection concerning the work of state prosecutors, training, preparation of regulations concerning organization and work of state prosecutors, etc. However, the inspection may not entail intervention into the legality and professional correctness of the state prosecutors' work concerning concrete decisions in criminal and other court proceedings. The judiciary inspection may be denied by the head of the state prosecutor's office, if he or she believes that inspection would represent an illicit interference into the autonomy of the state prosecutor.

In spite of the autonomy of state prosecutors in the decision making process, the State Prosecutor's Office is nevertheless a hierarchically structured body. Therefore, a superior state prosecutor or a state prosecutor with a higher rank may take over an individual matter or perform an act under the authority of a lower level state prosecutor. The decision for the takeover of an individual case must be in writing and with an explanation of grounds, one copy of which must be sent to the State Prosecutor General. The state prosecutor who has taken up a case within the authority of a lower rank state prosecutor, can take the matter up alone or assign it to another state prosecutor. The State Prosecutor General may also choose to assign another state prosecutor's office to take over a certain case if he or she assesses that this will facilitate the criminal court proceedings.

The State Prosecutor General may, within his or her authority, relocate a state prosecutor, upon his or her written consent, to work at another State Prosecutor's

Office, the Supreme State Prosecutor's Office of the Republic of Slovenia, the Ministry of Justice, or the Group of state prosecutors for special matters. In addition, if so required by the urgent nature of work, he or she may relocate a state prosecutor without the above-mentioned written consent, but only for a period of time not exceeding 6 months.

When speaking of the organization of the state prosecutor's office, the State Prosecutor's Council should also be mentioned, as it has a special role in the selection and appointment process, in the assessment of the state prosecutors' work, deciding on their promotion and remuneration, and giving opinion on the appointment of heads of state prosecutor's offices, after being appointed by the Government following the proposal of the Minister of Justice for the period of six months. The Council consists of seven members, of whom four are elected from among district (2), higher (1) and supreme state prosecutors (1) for a period of five years, one of the heads of the state prosecutor's office being appointed by the Minister of Justice for the same period as the State Prosecutor General and his or her deputy. By its nature, the State Prosecutor's Council has the same role as the Court Council in the judiciary.

### **The role and authority of state prosecutors on the basis of the Criminal Procedure Act**

The role and authority of state prosecutors on the basis of the Criminal Procedure Act may be split into two areas: the role and authority of state prosecutors in the preliminary procedure and in relation to the police, and the role of state prosecutors during the criminal proceedings in relation to the investigative judge and the court.

### **The role and authority of State prosecutors in the preliminary procedure**

The role of state prosecutors in relation to the police has undergone some changes in the last few years. Following Recommendation R (2000) 19 of the Council of Europe concerning the role of state prosecutors in relation to the police, and on the basis of provisions stipulated by the Criminal Procedure Act, the role of state prosecutors in relation to the police has become more dominant. In 2001 an Agreement on exercising the authority concerning the relationship between state prosecutors and the police, referring to detection and prosecution of offenders, was adopted. The act was replaced in 2004 by a Decree issued by the Government of the Republic of Slovenia on cooperation of state prosecutors and the police in detecting and prosecuting perpetrators of criminal offences. On the basis of these the role and powers of state prosecutors has been additionally defined.

The police force is as a rule autonomous in carrying out its function of detection of offenders and acts *ex officio*. However, it is obliged to inform immediately the first instance state prosecutor's office of all suspected criminal offences in order to enable state prosecutors to take part at an early stage of the preliminary procedure. Thus the police are obliged to inform the state prosecutor's office of any detection of a criminal offence within three days, and immediately in the case of grave crimes where immediate procedure actions are required, e.g. crime

scene search, etc. This is possible as a district state prosecutor's office operates on a 24-hour basis.

A state prosecutor may, based on their own judgment and autonomous decisions, direct the work of police in the preliminary procedure by giving the police obligatory instructions and suggestions, expert opinion and legal assistance in the phase of information and evidence gathering relating to legally relevant facts, taking part in activities in procedural and other actions in the preliminary procedure, and making decisions concerning further police measures against a suspect kept in detention which are obligatory for the police, e.g. whether a suspect is to be immediately released or brought before the investigative judge.

In the event that no directions are given by a state prosecutor, the police will act independently within the framework of their legal powers. The state prosecutor's interest in taking an active part in directing the preliminary procedure is mainly in the case of the gravest forms of organized crime and commercial crime. In practice, most cases refer to individual guidance or instructions given to the police by a state prosecutor, thus the police in most cases act autonomously within the framework of their legal powers. The responsibility for the successful detection of crimes still lies within the police. The state prosecutors' role cannot take over responsibility for the work of the police, although some might wish so.

One of the important aspects of the state prosecutors' authorities in the preliminary procedure is their role in the issuance of directions to implement secret investigation measures to be carried out by the police. Thus a state prosecutor may, on the basis of a proposal by the police, permit the use of certain secret investigation measures which invade the fundamental human rights of the individual, and may file motions for special secret investigation measures to be granted by an investigative judge when such authority is vested in the investigative judge. The authority of granting secret investigation measures, which interfere with fundamental human rights of the citizens, is thus split depending on the degree of the interference with fundamental human right, between the state prosecutor's office and an investigative judge. The state prosecutor may grant secret observation and concealed operations including fake documents, permit an entrapping purchase by police, entrapping receipt or delivery of a gift, or entrapping receipt or delivery of a bribe. In addition, the state prosecutor may, in executing the measures, grant a temporary suspension of arrest of a suspect, if the life and health of a third party are not under threat.

The authority of the investigative judge is to grant a warrant, on the basis of a proposal by the state prosecutor, for secret police observation and operations when technical devices for voice broadcasting and recording are used, when technical devices are to be placed in a vehicle or other closed space, when the measure is to be carried out on private premises, if with the consent of the owner of the premises, and when such measures are to be carried out against a person who is not a suspect. The investigative judge's powers also include a warrant to monitor electronic communication by tapping and recording, inspection of letters and other post, inspection of banks' computer systems and of other legal entities who carry out financial and commercial activities, and the tapping and recording of conversations, if so consented by at least one party to the conversation.

On the basis of a motion filed by a state prosecutor, the investigative judge may issue a warrant to an operator of an electronic communication network



to provide data about the communication traffic, a telephone number, the identification data of the electronic communication service users, and other information about the communication services performed. On the basis of a motion by a state prosecutor, the investigative judge may issue a warrant to a bank, saving financial institution or saving crediting institution to provide confidential data and to deliver documentation about remittances, deposits, the balance of the account, and transfers on the suspect's accounts or other persons involved in the commitment of a criminal offence.

The authority to deal with secret investigative measures is vested in Heads of District State Prosecutor's offices and their deputies, as well as the members of the Group of prosecutors for special matters.

After a preliminary procedure has been completed and criminal record has been filed by the police, however, prior to the initiation of criminal court proceedings, state prosecutors have a special authority when they partly overtake the judicial role. These are special alternative forms of criminal procedure, which replace the classical criminal prosecution before the law courts.

Thus Slovenia's state prosecutors more and more carry out the criminal diversion consisting of a special hearing held at the District State Prosecutor's Office, whereby the state prosecutor, in the presence of the suspect and the injured party, after reaching an agreement by both parties, orders the suspect to remedy or settle the damages, payment through the state prosecutor of a set amount to humanitarian purposes, carrying out community work, or payment of alimony. In 2003 alone, the sum collected in this way for humanitarian purposes, amounted to SIT 77,5 million, or EUR 330.000.

The other alternative form is mediation in criminal cases, when the district state prosecutor submits the case to a special mediator who tries to reach a settlement between the offender and the victim of a criminal offence. The use of such alternative forms of resolving criminal matters is possible for all criminal offences for which a punishment of up to three years of imprisonment is prescribed by law, and some other listed criminal offences for which a higher imprisonment penalty is prescribed by law. Annually, state prosecutors in the Republic of Slovenia disburden the law courts by at least 15 judges of the first instance courts.

## **Role and powers of state prosecutors in criminal proceedings**

In criminal proceedings state prosecutors' role is twofold: first, they have a role of a state body, and second, in representing the interests of a party in a criminal proceeding. Taking into account the fact that the Criminal Procedure Act of the Republic of Slovenia retains the elements of the continental procedure with an ever-increasing number of elements of the adversarial procedure, the role of the state prosecutor during the procedure is more and more distant from the role of a state body, and moving towards the role of a party in a dispute about a criminal case. More and more emphasis is in practice put to the equality of both parties in a criminal procedure.

Thus the state prosecutor may file requests to initiate an investigation to be conducted by the investigative judge. During an investigation, instituted by

the court, the state prosecutor takes part in procedural actions as a party in the proceeding, gives the investigative judge proposals also which witnesses should be examined, and files detention motions against suspects. The investigative judge cannot order custody against a suspect on an *ex officio* basis, but only on the basis of a motion by the first instance state prosecutor. The state prosecutor may also propose house arrest, prohibition to approach a certain person or place, house search, and all other investigation acts.

In accordance with the Criminal Procedure Act, the state prosecutor files indictments and other charges with the first instance courts and represents them before the court during the criminal proceedings, attends main hearings or other procedural acts before the law court (the main hearing cannot be carried out without the presence of the state prosecutor), lodges appeals against non-final court judgments, and extraordinary legal remedies against final court decisions.

The state prosecutor is also vested with powers in civil and administrative procedures. In this role and in particular as the first instance state prosecutors, they appear more as an exception, except before the Supreme Court, when the supreme state prosecutor files requests for protection of legality in civil procedures in a larger number.

As for mutual legal assistance in criminal cases, the district state prosecutors of the Republic of Slovenia have, on the basis of the Criminal Procedure Act, the authority to carry out international legal assistance independently. In carrying out this function they may address state prosecutor's offices abroad directly, without the intervention of the Supreme State Prosecutor's Office. This method expedites and facilitates the efficiency of the mutual legal assistance. Additional assistance to state prosecutors can be obtained from Slovenia's representative in Eurojust and through the contact point in the EU judicial network, being a representative of the Supreme State Prosecutor's Office. Thus, legal assistance may be transferred through diplomatic channels, through the Ministry of Justice, Interpol, the Ministry of the Interior, the Office for Prevention of Money Laundering, as well as directly between law courts and state prosecutor's offices.

The state prosecutors of the Republic of Slovenia are, on the basis of the positive experience so far concerning legal assistance in direct contact with state prosecutor's offices in other countries and due to the efficiency of such work, exceptionally inclined towards this fastest and extremely efficient form of mutual legal assistance. Unfortunately, some European legislations do not permit such fast and direct mutual contacts between the prosecution bodies, resulting in a major hindrance for the provision of efficient international legal assistance.

## **Conclusion**

From the above presentation of the organization and structure of the State Prosecutor's Office in the Republic of Slovenia and the powers vested in the state prosecutors, it is evident that the institution is to a large extent autonomous and the state prosecutors are independent in their decision-making. This prevents to a large extent any direct influence of daily politics on the work of the state prosecutors or even its possible abuse for criminal purposes.

There are different views whether such a system is good or not. Some often do not like it. Many want the State Prosecutor's Office in the Republic of Slovenia to be essentially more subordinated to the executive branch of power, thus providing a direct influence on the work of state prosecutors as well as influencing a state prosecutor's decision in individual cases.

The prevailing opinion is that legal certainty is more firmly ensured with the autonomous role of the state prosecutor.

Of course, such a role puts us, as state prosecutors, into a position of great responsibility from the point of view of our professionalism and the correctness of our decisions, the quality and success of our work, as well as criticism by the public.