



VRHOVNO DRŽAVNO TOŽILSTVO

REPUBLIKE SLOVENIJE

URAD GENERALNEGA DRŽAVNEGA TOŽILCA

SUPREME STATE PROSECUTOR'S OFFICE

OF THE REPUBLIC OF SLOVENIA

ADMINISTRATIVE OFFICE OF THE STATE PROSECUTOR GENERAL

Ljubljana, 20. January 2022

Ms Laura Codruța Kövesi

European Chief Prosecutor

Dear esteemed European Chief Prosecutor,

as mentioned during your visit to the Supreme State Prosecutor's Office of the Republic of Slovenia, in December 2022, the Slovenian Prosecutor's Office is facing challenges which we believe may also indirectly affect the execution of the powers of the European Public Prosecutor's Office. Below is a brief summary of these changes that are affecting efficient functioning of the Slovenian State Prosecutor's Office.

HUMAN AND FINANCIAL RESOURCES

APPOINTMENT OF PROSECUTORS

Since September 2020 we have been experiencing delays in the appointment of some state prosecutors by the Government of the Republic of Slovenia. Also, Government of the Republic of Slovenia acts selectively and arbitrary in its decision-making (appointing some of the selected candidates in individual state prosecutor's offices and not others - without explanation). There is also a stalemate position for candidates who are already state prosecutors and therefore in their case it is a matter of promotion to a higher state prosecutor's office (unreasonable delaying of their promotion). Reasons for their non-appointment so far despite numerous appeals (from the General State Prosecutor of the Republic of Slovenia and the State Prosecutor's Council) remains unexplained. Despite our efforts, 29 proceedings are still pending - 21 appointments have not yet been decided for 21 public prosecutors. As a result, only 203 out of 236 positions for state prosecutors are occupied in state prosecutor's offices.

SALARY CUT

The salaries of state prosecutors in the Republic of Slovenia are based on the State Prosecutor's Office Act (ZDT-1) and comparable to the salaries of judges. At the beginning of April 2020, the Parliament adopted the Intervention Measures Act to curb the COVID-19 epidemic and mitigate its consequences for citizens and the economy (hereinafter: ZIUZEOP). Given the fact that ZIUZEOP exempted certain groups, namely judges and even mayors, from the reduction of salaries of state officials, the inequality

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of treatment of officials is contestable. This was done without any practical and theoretical argument. The 30% cut was applied for a month and a half at the beginning of the epidemic and the salaries of the prosecutors went back to normal after that period. As prosecutors believe this salary-cut was unconstitutional, they have filed a request for a constitutional review. The Constitutional Court rejected the prosecutors' initiatives on the grounds that they had not exhausted all legal remedies, so they filed lawsuits before the Labour Court. The Labour Court already established possible unconstitutionality, interrupted the procedure, and asked the Constitutional Court for a preliminary opinion.

ONE - SIDED BUDGET REDUCTION FOR 2022

In 2020, the budget for 2022 for public prosecutor's offices and State Prosecutor's Council was adopted in the amount of 24.568 EUR. At the request of the Ministry of Finance, the Supreme State Prosecutor's Office prepared a new proposal - an amendment to the budget for 2022 and presented it to the Ministry of Finance in June 2021, where we agreed that the amended budget for 2022 amounts to 25.469,50 EUR and increases the already adopted (currently valid) budget for 2022 by 901.502 EUR. The proposal was previously approved by the Government of the Republic of Slovenia at its sitting on 24 June 2021 in the Cutting of Funds for Budget Users for 2022 but was later unilaterally changed.

The Government has sent to the National Assembly a proposal for amendments to the Budget of the Republic of Slovenia for 2022, which is 1.083.655 EUR less than the proposal agreed at a coordination meeting with the Ministry of Finance in June 2021.¹ For the first time we are facing the situation where the financial plan of the State Prosecutor's Office and the State Prosecutor's Council was previously coordinated with the Ministry of Finance of the Republic of Slovenia and then reduced without any explanation or notification that a reduction is being prepared, nor why or from where it estimates that our funds may be reduced.

NUMEROUS DISINFORMATION ABOUT PUBLIC PROSECUTION

Prosecutorial independence must be also maintained in the face of inappropriate pressure that may arise from the media and individuals or interest groups in the community or even the public. Regarding this area we have observed in the last year numerous disinformation about public prosecution that is trying to affect public perceptions and trust in the work of the Public Prosecutor's Office. Disinformation is also published or reposted by members of the executive branch through their social media which consequently magnifies the influence of such misleading information, enters public discourse, and is treated as fact.

LEGISLATIVE CHANGES AFFECTING PROSECUTION

The past year has been marked by events that could be perceived as undue influence on the independence of the judiciary. For instance, **changes in the Organisation and Work of the Police Act** (ZODPol): Amendment of the eighth paragraph of Article 4 in directing the police. Namely, the previously valid eighth paragraph of Article 4 represented the concretization of the constitutional regulation of competences for criminal prosecution under Article 135 of the Constitution of the Republic of Slovenia. The provision limited the competence of the Minister to police proceedings, the direction of which was taken over by the competent prosecutor based on the law governing criminal proceedings. It further provided that, notwithstanding the law governing criminal proceedings, the prosecutor shall be deemed to have taken over the direction of the police work in pre-trial proceedings

¹ This reduction represents a reduction in the budget for the Public Prosecutor's Office and the State Prosecutor's Council by 4.25% of the harmonized budget, and even a reduction in the already adopted budget for 2022 by 182.153 EUR in 2020.

from the moment he was informed of the offense. The amendment to the eighth paragraph of Article 4 of the ZODPol, which deleted the wording of the last sentence, has the consequence that there may be a situation where both, the Minister of the Interior and the Prosecutor will be responsible for directing the police in pre-trial proceedings even though the prosecutor has already been informed of the offense. In such a situation, there is a potential threat that the Minister will be able to intervene in the execution of instructions received from the prosecutor and thus in his competence as well as would be able to control the prosecutor through the work of the police. In summary – the prerogatives of the prosecutor's office to decide on the progression or dismissal of the criminal case may be interfered by the request of minister of internal affairs that sought to review some of high-profile cases where police investigations did not end in prosecution.²

In 2020 also entered in force the Decree amending the Decree on the participation of the Public Prosecutor's Office, police and other competent state bodies and institutions in detecting and prosecuting perpetrators and specialized and joint investigation teams in which Article 12 introduces the form of instructions or the obligation of the public prosecutor to draw up a written official note and send it to the police within 48 hours if the police officer requests written instructions and proposals, regardless of the extent and complexity of the case. The decree also stipulates that the state prosecutor has taken over the direction of the work of the police in pre-trial proceedings from the moment he gives written instructions in a specific case. Such changes represent a significant deviation from the established cooperation and increased bureaucratization and administration of the public prosecutor's office. This obligation also has a significant impact on dealing with complex forms of crime, especially in jurisdiction of the Specialized State Prosecutor's Office of the Republic of Slovenia and in cases with an international element requiring a specific approach to investigation.

Furthermore, without prior correspondence with the State Prosecutor's Office the government introduced time limit for resolving criminal cases by prosecutors into amendment of Criminal Procedure Act. We criticized this proposal as the strive for timeliness could severely affect the quality of prosecutor's work. Next legislative change was the amendment of Public Prosecutor's Office Act (ZDT-1D) that enacted the obligation of prosecutors to submit in advance to the head of office their acts on dismissals of criminal cases for criminal offences with the prison sentence of more than three years. This provision weakens the autonomy of the individual prosecutor whereas the head of the office does not realistically have appropriate resources to properly evaluate every act of dismissal that he/she is obliged by the law. The Ministry of Justice has also in November 2021 submitted a proposal for amendments to the Public Prosecutor's Office Act (ZDT-1F), which allows inadmissible political staffing, thus destroying the guaranteed position of the State Prosecutorial Council. The proposal adds the competence of the Minister of Justice, that in case there are not enough candidacies he can also propose candidates who did not apply for the tender if they meet the conditions and give written consent. Also, the final selection of candidates to be nominated to the European Chief Prosecutor would have the government and no longer the State Prosecutorial Council.

We are also faced with changes in criminal law. The criminal offense of Threatening the Security of Another Person under **Article 135 of Criminal Code was supplemented** in the third paragraph that the threats aimed at the highest representatives of the state (President, Prime Minister, President of the National Council, President of the Constitutional Court, President of the Supreme Court), member of Parliament, member of the state council, a member of the government, a judge of the Constitutional or Supreme Court and their relatives, are considered ex officio, i.e. without the motion of the injured party. This is a problematic and, above all, unnecessary change, as the victims of this crime are already

² <https://www.24ur.com/novice/slovenija/hojs-pricakuje-porocilo-kako-so-stekle-zadeve-glede-revizije-na-npu.html>

sufficiently protected under existing legislation and there is no need to prosecute this crime only for certain categories without their proposal.³ Also this is a highly subjective concept, so it is expedient to conduct criminal proceedings with the clearly expressed will of the injured party, as previously determined by Article 135 of KZ-1.⁴ The text designed in this way is constitutionally controversial and violates the principle of equality before the law.

We also inform you of the substantively unfounded and unclear amendment **of the substantive criminal law (KZ-1J)**, which introduces additional criteria for the statute of limitations and which greatly shortens procedural deadlines in specific criminal cases and, despite serious interference with the general part of the Slovenian Criminal Code, it is considered a minor amendment to the law under the shortened legislative procedure.

Despite the critical and well-argued comments of the entire professional public as well as the Government Legislation Service and even the Ministry of Justice that the proposal is nomotechnically incomplete and dogmatically and systemically ill-considered, and that it will be in the event of the adoption of the proposed disproportionately reduced limitation periods, the imposition of effective and dissuasive criminal sanctions will be systemically prevented⁵, also that in certain cases there will undoubtedly even be an abolition of the prosecution of the most serious crimes, arguments of the prosecution and the rest of the profession were not taken into account.

Consequently, we estimate that the proposed legislation (KZ-1J) will disproportionately hinder or even prevent the effective prosecution of criminal offenses. The proposal, which should by no means be the result of political thinking and inters based decision making, also indirectly lowers the standards for the protection of national financial interests, and thus the EU's financial interests, devaluing the commitment of Article 325 of the Treaty on the Functioning of the European Union, which requires Member States to take the same measures to prevent crimes affecting the financial interests of the Union as they take to prevent crimes affecting their own financial interests.

With this letter we express our strong concern over the further course of the adoption of amendments to the **Criminal Code (KZ-1J)**, as it is proposed to be adopted under an abbreviated procedure (i.e. parliament debate and voting is expected in the time from 30 January – 4 February) and also our general concern about all of the above described problematic changes and their impact on the efficiency of prosecution in our national as well as international framework.

Respectfully,

Drago Šketa
Prosecutor General of the Republic of Slovenia

³ It should also be noted that the six-month period for filing a motion for prosecution is long enough for anyone who feels seriously threatened to make a motion. It should not be overlooked that the criminal offense in question is a personality offense in which the right to personal security is protected as a fundamental human right.

⁴ The amendment may create a situation where, without first establishing whether the individual belonging to the said circle of victims felt threatened, criminal proceedings were instituted against the alleged perpetrator and possibly criminal proceedings, which would have a negative impact on the scope of work of the holders and other stakeholders in pre-trial and criminal proceedings, and the concrete criminal proceedings would not end in a conviction, because (only) the court proceedings would show that the alleged victim was not even seriously endangered.

⁵ Especially in cases of economic, corruption and other large-scale, complex crimes, where proceedings due to the complexity of a criminal case or an international element usually take longer.