

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY SLOVAKIA

ARTICLE 11 UNCAC

JUDICIAL AND PROSECUTORIAL INTEGRITY

SLOVAKIA (EIGHTH MEETING)

- At the **Ministry of Justice level**, Draft of Strategic Plan of Corruption and Conflict of Interest Prevention within the Ministry of Justice of the Slovak Republic was prepared and submitted for approval:
- It was drafted by Working Group of Ministry of Justice which evaluates compliance with international obligations in the field of criminal law (hereinafter “the Group”)
- The group advises Minister of Justice in adopting measures and coordinates the control in the field of compliance with the international obligations arising out of international agreements in the field of criminal law
- Main goals of Strategic plan are transparency, economic handling with State assets, strengthening the relationship with civil society and corruption risks reduction
- Strategic plan establishes competences for some employers. Those competences are related to control activities. In particular, they shall control all corruption risk fields and they will evaluate such fields
- Map of corruption risk is attached to the Strategic Plan – it is a tool which shall be used for identification and minimisation of the listed risks (all departments of the Ministry participated in preparation of this tool)
- Effective implementation and control is one of the key purposes of the Strategic plan
- Strategic plan provides basis for its regular evaluation. A periodic report shall be prepared in order to assess anticorruption measures, propose other measures where needed, Map of corruption risk update, total number of identified risks and results of assessment, overall evaluation of the efficiency of the whole anticorruption programme
- The draft Strategic Plan is currently under final internal assessment procedure.

- **With respect to other anti-corruption activities** worth mentioning – we would like to point out to regular seminars organised by the Government Office of the Slovak Republic intended for public officials. On 14 March 2017 a seminar „*Increasing legal awareness in the field of corruption prevention and fight against corruption*“ was organised by the Government Office. It’s importance may be underscored by the fact that Mr Robert Fico, the Prime Minister of Slovak Republic as well as Mr Jaroslav Čížnár, the Prosecutor General gave their speech at the seminar. Representatives of international organisations and media also participated in this seminar
- Training activities are also continuously organized by the Judicial Academy (specifically intended/designated for judges and lay officers) as well as prosecution office (for prosecutors). There are a few examples:
- In March 2017 (6 – 9 March 2017) a seminar “Growth of Personality” for judge candidates and prosecutor candidates has been organized by Judicial Academy. A seminar “Ethics of the Work of a Judge and Prosecutor” will be held in October 2017 (26 – 27 October 2017). The “Rules of

Prosecutorial Ethics and Code of Ethics of Prosecutor and Duties of Prosecutor” have been included in the program of seminars for prosecutor candidates (8 – 12 February 2016) and for junior prosecutors (13 – 15 June 2016). The issues of the Code of Ethics and of professional ethics of prosecutors have been discussed during working meetings of director of International Department of the Prosecution General Office on 20 May 2016 (with Regional Prosecutors Deputies and the head of international divisions of the Regional Prosecutors Offices, director of Criminal Department of the Prosecution General Office on 6-7 October 2016 (with Regional Prosecutors Deputies and District Prosecutors Deputies) and working meeting of prosecutors specialized on the non-criminal area on 7-9 November 2016 (the Chairman of the Ethical Committee was present in person and gave a speech to the participants).

- **In relation to article 11 and measures to promote the independence, integrity and impartiality of members of the judiciary and prosecution services, States parties and signatories may wish to cite and summarize measures that:**
 - With respect to judges, the following measures have been undertaken. **The Judicial Council of the Slovak republic**, as a constitutional body responsible for the independent status of the judiciary from other public authorities by the decision no. 594 of 17 December 2015 adopted under Article 141a paragraph 5 letter j) of the Constitution of the Slovak Republic, in cooperation with the judges’ self – administration bodies, principles of judicial conduct (principles of judicial conduct may be found in the attachment).

The principles of judicial conduct:

- govern the conduct of judges whose function, in terms of democratic state and the rule of law, is understood as the practice of the profession that ensures the protection of the rule of law;
- emphasize the fundamental values of the function of judge and moral qualities of judge whose function is understood as a lifelong profession;
- determine the rules and the framework for the regulation of judges’ behaviour while performing the judicial duties and out of the performance as well;
- set standards and rules not only for the judges’ behaviour but they are also guidelines for judges’ behaviour, who has an option to address the ethical dilemmas to the Judicial Council of the Slovak republic and to the other judicial self - administration bodies.
- contain also rules of ethical behaviour of a judge and the safeguards for respecting the principles of judicial ethics
- Principles of Judicial Ethics form a part of trainings of judicial candidates. The trainings of the candidates are provided by the Judicial Academy of the Slovak Republic. The trainings last 4 days and they are held 4 times per year. One of the trainings is usually focused on the ethical principles. Furthermore, in October 2017 there will be held a seminar for judges and prosecutors that will be focused on the judicial (and prosecutorial) ethical principles.
- Pursuant to the adopted *Principles of Judicial Ethics* (cited above in the Rec. viii.) Article III. para. 2 „The judge doesn’t abuse the judicial office to promote his/her own personal or economic interests or personal or economic interests of the other persons. “
- In accordance with Article III. para. 8 „The judge performs his / her personal and extra-judicial activities so that he / she minimizes the risk of the conflict of these activities with the obligations that stem from the judicial office. “
- Furthermore, pursuant to Article III. para. 9 „The judge does not involve in activities that would violate the proper performing of his / her duties. “
- As to the enforcement of the rules on conflict of interest and corruption risks within the judiciary, the Judicial Council of the Slovak Republic is empowered by the Act no. 185/2002

Coll. on Judicial Council of the Slovak Republic to ensure a public control of the judiciary and exercise the supervisory competences.

- According to Section 3a of the Act on the Judicial Council, when ensuring the public control of the judiciary pursuant to the Article 141a par. 5 letter a) of the Constitution, the Judicial Council shall:
 - a) contribute to the management and administration of the courts of the Slovak Republic to the extent provided by law,
 - b) review the reports on internal review of the courts, analyse the causes of identified shortcomings and propose measures to eliminate them,
 - c) **take measures to strengthen the public confidence in the judiciary,**
 - d) ensure the active participation of its members in the plenary session of the Supreme Court of the Slovak Republic and the within selection committees under a special regulation,
 - e) perform other duties prescribed by law.
- According to Section 3b of the Act on the Judicial Council, when exercising the supervisory competences pursuant to Article 141a par. 5 letter i), the Judicial Council shall:
 - a) promote measures for permanent complying with requirements of judicial competence which guarantee that the judicial office will be performed properly (hereinafter referred to as "requirements of judicial competence"),
 - b) approve the schedule for verification of fulfilling the requirements of judicial competence,
 - c) **evaluate the information on the action of a judge, which is incompatible with the requirements of judicial competence obtained from the courts, other public authorities or detected based on its own activities**
- d) **may propose to the President of the Judicial Council to initiate the disciplinary proceeding.**
 - Pursuant to Section 4 par. 1 letter f) of the Act on the Judicial Council, the Council has a competence to express an opinion on proposals of generally binding legal regulations setting out the organization of the judiciary, proceedings before courts and the status of judges. In fact it means the power to comment the draft laws prepared by the Government.
 - Judicial Council of Slovak Republic has disciplinary competence (according to § 120 paragraph 2 letter f) of Act 385/2000 Coll.), to consider whether the conduct of a judge is in violation with these principles, if the disciplinary proceeding has not been initiated.
 - The Judicial Council of the Slovak republic has its competences regarding the asset declaration of a judge regulated by an Act No. 385/2000 Coll. on Judges and Lay Judges as amended.
 - Judge is obliged during the entire term of judicial office to declare the status of his assets:
 - a) within 30 days from the day of assuming judicial office,
 - b) by 31 March of each calendar year of his term of judicial office.
 - If Judge fails to declare his assets (written statement), Chairman of the Judicial Council shall remind him to perform such duty no later than within 30 days. Judicial Council shall examine the completeness of the written statement and asset declaration and if necessary shall request the Judge to provide any required clarification of supplementation within 30 days. If, as a result of evaluation of asset declaration of a judge such a growth of property value is discovered and if this property obviously exceeds the sum of his salary and other declared income, upon the request of the Chairman of the Judicial Council the judge is obliged to demonstrate its origin. Judicial Council may also request the Judge to submit receipt of lodged tax return form on income of natural persons or receipt demonstrating the income of Judge or acquisition of assets and the value thereof. The Chairman of the Judicial Council shall

specify to the Judge an appropriate deadline to perform such duty, which may not be longer than 60 days. If Judge does not perform any of the duties stipulated above, the Judicial Council may submit a motion to the Minister to initiate disciplinary proceedings.

- In the year 2016 there were 1331 asset declarations examined (in 2015 there were 1331 active judges that had obligation to submit the asset declaration). It means all declarations have been examined.
- Examination of the declarations is done by a specialized department of the Office of Judicial Council (Legislative department). This department detects all irregularities of the declarations. The main method of examination is a comparison of actual asset declaration with the previous one. It examines particularly accruals and decrements of property. If any irregularity is detected (if the accrual on property is more than 50.000€ and it is not clear from the declaration how the relevant judge gained the property) the particular declaration is submitted to the Judicial Council that discusses the declaration of the judge on a public hearing of the Judicial Council of the Slovak Republic. It asks the relevant judge to provide an explanation of such an accrual.
- Up to date, there were no cases where a judge would not be able to explain such an accrual. Usually only mistakes or omissions in the declaration are detected.

- **With respect to prosecutors** - The Code of Ethics has been adopted on 11 January 2016.
- The Code of Prosecutors' Ethics shall be approved by the Council of Prosecutors, it shall be published on the website of the General Prosecutor's Office" The English version of the Code of Ethics is publicly available on the website of the Prosecution General Office: <https://www.genpro.gov.sk/information-for-press/code-of-ethics-for-prosecutors-3973.html>
At this website also commentary to the Code of Ethics is accessible: <https://www.genpro.gov.sk/information-for-press/commentary-on-the-code-of-ethics-for-prosecutors-3974.html>
- The amendment to the Act on Prosecutors and Prosecutor Candidates mentioned above established an Ethical Commission (Sections 217b, 217c and 217d) that is empowered to decide on ethical issues and ethical acceptability of the behavior (conduct) of prosecutors even on its own motion. Disciplinary commission deciding on breach of ethical rules of a prosecutor is obliged to ask the Ethical Commission for an opinion on the matter. The Ethical Commission shall provide such an opinion in 30 days.

Ethical Committee

Section 217b

- (1) If the submitter or the Disciplinary Committee considers that the disciplinary misdemeanour of the prosecutor consists of breach of rules of the Ethics of prosecutors, he/she should request the opinion of the Ethical Committee of the Prosecution Office (hereinafter as „Ethical Committee“). The Ethical Committee shall issue its opinion within 30 days following receipt of the request of the submitter or of the Disciplinary Committee.
- (2) The opinion of the Ethical Committee is mandatory for the submitter; for the Disciplinary Committee the opinion it is not mandatory.
- (3) The Ethical Committee may adjudicate the ethical questions and ethical acceptability of the conduct of the prosecutors even of its own motion. (Note – it means without any claim)

- (4) The Ethical Committee issues its opinions and recommendations in written; the Ethical Committee is obliged to justify each opinion and recommendation.
- (5) The two-thirds majority of all members of the Ethical Committee are necessary for the adoption of an opinion or recommendation of the Ethical Committee. The member of the Ethical committee who voted against adopted opinion or recommendation may submit his/her own separate opinion. The separate opinion of the member of the Ethical Committee is delivered and published likewise the opinion or recommendation of the Ethical Committee.

Section 217c

- (1) The Ethical Committee is composed of nine members who are elected in the direct election with secret ballot by individual Assemblies of prosecutors. Only the prosecutor may be the member of the Ethical Committee. The members of the Ethical Committee shall elect the Chairperson and the Deputy-Chairperson of the Ethical Committee from amongst them. The Chairperson shall convene and lead the Ethical Committee meetings and represents the Ethical Committee externally. The Deputy-Chairperson of the Ethical Committee stands for the Chairperson of this Committee in his absence or if the Chairperson of the Ethical Committee entrusted him/her with the representation.
- (2) Each of the Assemblies of the prosecutors has the right to elect one member of the Ethical Committee; the Assembly may also revoke and replace the elected member by another member. The member of the Ethical Committee has the right to renounce his membership in the Ethical Committee. The power to perform the tasks related to the membership in the Ethical Committee ceases to exist on the first day of the month following the month in which the revocation of the membership or renounce of the membership of the member of the Ethical Committee occurred.
- (3) Specific circumstances regarding the election and revocation of the members of the Ethical Committee are established in the electoral order approved by the Prosecutorial Council.
- (4) The General Prosecutor's Office shall publish the list of members of the Ethical Committee on its website.

Section 217d

- (1) According to the instruction of the Chairperson of the Ethical Committee, the General Prosecutor's Office shall ensure meetings of the Ethical Committee and its activities administrative, organisationally and materially.
 - (2) Specific circumstances regarding the negotiations of the Ethical Committee shall be governed by the rules of procedures approved by the Ethical Committee.
 - (3) The Ethical Committee shall regularly inform about its activities on the website of the General Prosecutor's Office where all generalizing opinions and recommendations are also being published.
- According to the Section 265 Journal of laws Subsection 1 of the Act, the Assemblies of the prosecutors had to elect the members of the Ethical Committee till 31 March 2016 at latest.

- The Assembly of the prosecutors has adopted the rules for elections of the members of the Ethical Committee on 17 March 2016. The Assemblies of the prosecutors have elected the members of the Ethical Committee within a legal deadline and the Ethical Committee was created and is fully operational. The list of members of the Ethical Committee of the prosecution is published on the web page of the General Prosecutor's Office of the Slovak Republic <https://www.genpro.gov.sk/eticcka-komisija-prokuratury/zoznam-clenov-etickej-komisie-prokuratury-3936.html>.
- The function carried out in the Ethical Committee by the prosecutor can be awarded by up to the basic functional salary of the prosecutor (Section 115 Subsection 1 Letter a) of the Act).
- The rules of procedures of the Ethical Committee entered into force on the 16 June 2016.
- The first opinion of the Ethical Committee was issued on 4 October 2016 with reference number XV/1 Spr 82/16/1000, whereby two members of the Ethical Committee issued separate opinion on the 19 October 2016. The subject to assessment was the issue regarding the act of the prosecutor as a private individual who provided the opinion on the physical presentation – clothing of some politicians of the Slovak Republic which was published on the web-portal. The opinion of the Ethical Committee and the separate opinions of the two members of the Ethical Committee are published on the web page of the General Prosecutor's Office of the Slovak Republic <https://www.genpro.gov.sk/eticcka-komisija-prokuratury/stanoviska-a-odporucania-etickej-komisie-prokuratury/stanovisko-etickej-komisie-prokuratury-sp-zn-xv1-spr-82161000-zo-dna-04102016-a-separatne-s-3987.html>.
- Guidelines on the Code of Ethics of Prosecutors are published on the website of the General Prosecution Office:
- <https://www.genpro.gov.sk/information-for-press/commentary-on-the-code-of-ethics-for-prosecutors-3974.html>
- The Code of Ethics does not mention directly the term “conflict of interests”, however, it resolves issues related to its content.
- On its meeting on 20 – 21 September 2016 the Ethical Commission analysed the Code of Ethics and on the basis of its provisions it released a resolution No. 2 which provided a definition of the term “conflict of interests” as a “contradiction between due performance of the duties of the prosecutor and his personal interests or his relation to the matter which has or could have an impact on due performance of the duties of the prosecutor, on his impartiality, independence and credibility in relation to the proceedings and decision in the matter.”
- Ethical Commission released this resolution after it considered a request of the General Prosecutor's Office, Code of Ethics and Commentary to the Code, as well as Article 13 of the annex to the Recommendation of the Council of Europe Rec (2000)10 on the Code of Ethics of Public Officials. Ethical Commission did not find any practical problems concerning the conflict of interests. It declared that the Slovak legal order contains clear rules how to resolve such situations. The issue is also regulated in detail in the Code of Ethics of Prosecutor and for the time being there is no need for amendments
- Beyond the conclusion of the Ethical Committee it should be stated that a definition of the term “conflict of interests” is not needed, inasmuch that the basis and content of this term are clearly and unambiguously amended in the legal order in force (Section 5 and Section 52 Subsection 1 of the Act No 153/2001 Collection of Laws of the Prosecution, Section 26 Subsection 1 Letter b) to f) and j) to n) of the Act No 154/2001 Collection of Laws of the Prosecutors and Legal Candidates of the Prosecution, Section 31 Subsection 1, Subsection 3 the last sentence of the Criminal Code as well as in the Code of Ethics for Prosecutors).
- Section 6 Subsection 2 of the Act No 153/2001 Collection of Laws of the Prosecution was amended by the Act No 401/2015 Collection of Laws applicable from 1 January 2016, as follows:

- The instruction issued to the subordinated prosecutor has to be in the written form. The subordinated prosecutor is obliged to fulfil it unless otherwise specified. If the case does not tolerate the deferral, the superior prosecutor can issue the instruction verbally, by telephone, by fax or by the electronic means. The instruction given verbally, by telephone, by fax or by the electronic means without an appropriate electronic signature has to be repeated by the superior prosecutor within 48 hours in written form or by the electronic means with the relevant electronic signature, otherwise this instruction becomes null and void. The superior prosecutor who issued the instruction, that did become null and void, is responsible for the proceedings based on such instruction. The instruction regarding the withdrawal (note - removal of a file from a prosecutor) of the case according to the Subsection 1 Letter a) and b) has to be substantiated by the superior prosecutor in written form; the instruction regarding the withdrawal of the case is being published according to the Section 55m.”
- On 4 November 2014 a prosecutor general issued an instruction to establish a registration system on taking a case away from a prosecutor. Up to date the system detected two cases of taking a case from one prosecutor to another due to potential conflict of interests.
- With effect from the 28 January 2015 a registration system was established at all levels of prosecution offices (cases withdrawn from a prosecutor by the procedure according to the Section 31 of the Criminal Code with marking of the code No 75 in the data system PTCA (Prosecutor’s Criminal-Civil Agenda). By the review of the PTCA output were identified two cases in which was decide about the exclusion of the prosecutor of the execution of acts regarding the criminal proceedings acts under the Section 31 Subsection 1 of the Criminal Code. In the first case the applicable Deputy of the Regional Prosecutor has determined and according to the Section 201 Subsection 6 Letter a) of the Criminal Code had withdrawn the criminal case conducted on the District Prosecutor’s Office and has ordered this case for further proceedings to the another District Prosecutor’s Office. The reason was the fact that the submitter and the aggrieved party regarding the crime of theft under the Section 212 Subsection 1 of the Criminal Code in the state of attempted crime under the Section 14 of the Criminal Code, was the uncle of the prosecutor of the first prosecution office and brother of the employee of the same prosecution office, by which the concerns have arisen about the objectiveness and impartiality of the prosecutors of the first prosecution office. In the second case regarding the crime of fraud under the Section 221 Subsection 1 of the Criminal Code had the case withdrawn from one prosecution office and ordered to the another prosecution office for execution from the reason that the submitter and the aggrieved party was the prosecutor of the first prosecution office, where the concerns have arisen about the objectiveness of other prosecutors of the given prosecution office.
- The Criminal Department within the GPO has been concerned also by the question whether it is needed to adopt further measures, eventually to propose the Department of Legislation and Constitutional Law to adopt further measures. The outcome of the ascertaining from the evidence of the withdrawn cases was discussed on the working session whereby the prosecutors, the participants of the session have identically alleged that the procedure under the Section 31 Subsection 1 of the Criminal Code succeeds the procedure under Section 201 Subsection 6 of the Criminal Code, as follows:
 - “About the withdrawal and commandment of the case between the law enforcement bodies the decision is made by the command with adequate reasoning
 - a) their direct common superior authority,
 - b) prosecutor performing the supervision under Section 230, if referred to the withdrawal and commandment of the case between the law enforcement bodies mentioned in the Section 10 Subsection 8, which are within the scope of different ministries.”

- It was also pointed out to the jurisprudence of the general courts according to which the ratio of the criminal proceedings to the persons referred to in the Section 31 Subsection 1 of the Criminal Code means a relationship to one of the mentioned persons which may raise public doubts as to the impartialness of the law enforcement body for that relationship. It may be a family, friendly but also a negative relationship arising out of the fact that there was a dispute between the official person and one of the persons mentioned in the Section 31 Subsection 1 of the Criminal Code, etc. Enforcement of the institute of the Section 31 Subsection 1 of the Criminal Code is possible only, if the existence of a relationship gives rise to doubts as to the impartialness of an official person in her/his relation to the case, to the persons directly concerned by the case or to their representative, mandatary and advocate (*mutadis mutandis* Decision of the Constitutional Court of the Slovak Republic of 16 June 2015 reference number III. ÚS 306/2015-12)