

THE SLOVAK LEGAL AID SYSTEM

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Access to justice is guaranteed by the Slovak Republic's law since it has been constituted. This right is an integral part of the supreme piece of legislation – the Constitution of the Slovak Republic, into which international conventions on human rights and fundamental freedoms have been transposed.

An important entity and party to criminal proceedings is, beyond any doubt, the person being prosecuted who is referred to as the suspect, the accused, the defendant or the convict. Even though all these terms refer to the same person, individual terms express different status depending on particular stages of the criminal proceedings. Rights of the accused in the course of the criminal proceedings are guaranteed by international treaties binding on the Slovak Republic as well as by the Slovak Constitution. Access to justice in criminal proceedings and thus the right to defence is the fundamental right of the accused, and therefore the concept of the defence counsel, his rights and obligations in criminal proceedings, as well as the issue of recovery of defence costs is in detail governed and regulated by the Criminal Code.

The underlying philosophy of the right of the accused to be represented by the defence counsel in the criminal proceedings in Slovakia is particularly the right to be instructed about his rights (as they apply at individual stages of criminal proceedings); law enforcement agencies are obliged to enable the accused to fully exercise these rights.

The accused has primarily the right to

- Express his opinion on all facts he is accused of
- Specify circumstances, propose, submit and gather evidence in support of his case
- Remain silent
- Instruct a defence counsel of one's own choice and consult with him
- Seek legal aid if for financial reasons, he cannot retain his own defence counsel
- Put forward proposals, applications, motions and petitions and bring appeals
- Request the prosecutor to examine the course of action taken by the police
- Review the file and make transcripts, notes and copies thereof
- Disclosure of the file, and propose any relevant information to be added in the course of investigation
- Have the written indictment served on him

- Be present at the main hearing in court and in open session
- Examine witnesses he proposed to hear in the trial
- Make closing speech, and to have the last word
- Have access to an interpreter and translator if he does not have command of the language in which the proceedings are conducted.

In some cases, the exercise of certain rights by the accused is subject to the prior consent of a law enforcement agency. For example, the exercise of the right to review the file may be, at certain stage of criminal proceedings, denied by the law enforcement agency (investigating officer, prosecutor). However, this right cannot be denied after the accused has been informed about the disclosure.

The defence counsel is an autonomous entity in the criminal proceedings. However, as an entity of the criminal proceedings, he essentially acts on behalf of the accused, with his consent, and within the limits of the client's consent. According to applicable legal rules, the defence counsel is not an autonomous party to the proceedings. Only a lawyer (solicitor) admitted to the Slovak Bar Association may act as a defence counsel. Basic task of the defence counsel in criminal proceedings is to provide legal services to the accused as necessary to promote and defend his interests, and reasonably use the means and methods of defence prescribed by law, particularly to make sure that facts and all legal issues acquitting the accused or mitigating his guilt are fully and timely explored and properly adjudicated. The defence counsel may already at the pre-trial stage make submissions, file petitions and applications, and bring appeals on behalf of the accused. He may as well review files, and be present at any act of criminal proceedings. At all stages of criminal proceedings, the defence counsel may in advance ask for a copy or transcript of the minutes taken in respect of each act of the criminal proceedings. Law enforcement agencies and courts are obliged to accommodate such request.

Generally speaking, every person accused or suspected, who was arrested, has the right to retain a defence counsel of his own choice and exercise his rights in the criminal proceedings either himself, or through the defence counsel so retained. Such choice mostly depends on the decision of the accused or, as the case may be, on the decision of certain authorised persons as defined by law, who also may choose an attorney for him. It may as well happen that by virtue of law the accused after a charge has been made against him must be represented by a defence counsel (the so-called "obligatory defence"). The accused has to choose a defence counsel by the set deadline, failing which the defence counsel shall be appointed by the court (ex officio).

At the pre-trial stage, the accused must be represented by a defence counsel:

- If the accused is in custody, serves a sentence of imprisonment, or is in a medical institution
- If the accused lacks legal capacity, or if his legal capacity has been diminished
- In the most serious crime cases (the most serious crime is by definition a crime which under the Penal Code carries a ten-year mandatory minimum prison sentence). In such case, the accused may, after the first consultation with the defence counsel, waive the right to obligatory defence. This waiver may be withdrawn
- In the juvenile crime cases
- In cases against fugitive offenders.

The accused must be represented by a defence counsel also if the appropriate court of law (at the pre-trial stage the prosecutor or investigating officer) deems it necessary, particularly where there is any doubt about the capacity of the accused to properly defend himself.

Obligatory defence comes into consideration also in the extradition cases, European arrest warrant cases, as well as in proceedings which involve protective medical treatment (with the exception of alcohol rehab courses).

Where decisions on the enforcement of judgements are made in open court, the criminal offender must be represented by a defence counsel if:

- The criminal offender lacks legal capacity, or if his legal capacity has been diminished
- A juvenile, who at the time of the open session has not attained the age of eighteen, was granted parole
- The criminal offender is in custody, or
- There are doubts about the criminal offender's capacity to properly defend himself.

Likewise, applicable legal rules by virtue of law guarantee to the criminal offender the right to mandatory defence in certain types of proceedings, which concern extraordinary appeals and remedies as prescribed by law.

The Code of Criminal Procedure defines two basic reasons for appointing a legal aid counsel. First, even though the accused must be represented by a defence counsel within the obligatory defence scheme, he failed to retain the defence counsel of his own choice. The presiding judge (and, at the pre-trial stage the pre-trial judge) is obliged to appoint a legal aid counsel without any delay. Second, the court may also appoint a legal aid counsel if the indigent accused, who is unable to pay towards the cost of his defence, asks the court to appoint the defence lawyer to represent him in the trial, although it is not a case of obligatory defence. The accused must duly and properly prove his case of being unable to pay towards the cost of his defence. If in the course of the trial the accused is proved to have sufficient funds to pay the defence costs, the appointment of the

legal aid counsel by the court shall be cancelled. The defence counsel retained by the accused of his own choice always takes priority over the legal aid counsel appointed by the court therefore if the accused retains a defence counsel of his own choice at any stage of the court trial the court appointment shall be revoked.

The legal aid counsel is obliged to start acting in the representation or the defence of a client without any delay. He can be relieved of this duty for compelling reasons only, that being at his own request or at the client's request. These reasons are in fact the same reasons as those laid down in the relevant provisions of Act on the Legal Profession which apply to the revocation of the power of attorney by the defence counsel (e.g. breach of confidence or conflict of interest etc.).

As far as the exercise of the defence rights is concerned, the Slovak Code of Criminal Procedure is "endowed" with a specific feature, being the concept of the so called "substitute attorney". A substitute attorney may be appointed in such cases where there is any concern or risk that the main trial or open session might be obstructed or thwarted as a result of the absence of the chosen defence counsel or legal aid counsel. The substitute attorney enjoys the same rights and has the same obligations as the defence counsel retained of the client's own choice. Such rights may be exercised only in the absence of the defence counsel retained of the client's own choice, or in the absence of the legal aid counsel. However, there is a gap between the theory and practice and courts have faced considerable difficulties in certain cases, which had to do with the respect for the fundamental right – access to justice and right to defence. Indeed, there have been cases where the substitute attorney appointed by the court was one of the defence counsels representing another co-defendant, or the same defence counsel whose power of attorney was revoked by the defendant due to the breach of confidence. At the same time, the Code of Criminal Procedure does not define the term "reasonable concern", which leaves lots of room to the court for its own interpretation of this concept. The substitute attorney may thus be assigned in almost any case. The Criminal Law Committee operating within the Slovak Bar Association disagreed with the introduction of such concept in this form. Frankly speaking, a defence counsel in criminal proceedings cannot be in the position of a formally required element to "consecrate" the criminal proceedings.

It is accepted as standard in the Slovak Republic that the costs of defence, which were incurred by the defence counsel retained of the client's own choice are fully borne by the client. The state bears the costs of trial incurred by the accused in cases of obligatory defence where the accused failed to retain his defence counsel. However, the accused is obliged to compensate the state for these costs, if he was under a final judgment found guilty. This involves, in particular, the costs related to custody and

imprisonment, including the costs incurred by the legal aid counsel in the event of obligatory defence.

In criminal proceedings, a defence counsel may gather and submit evidence at the defence cost. However, the exercise of this right is substantially more difficult in the situation where the legal aid counsel is appointed by court and the defence costs are temporarily borne by the state. Under the applicable rules the legal aid counsel may not request even a retainer for defence costs to be incurred in the course of representing the client. Therefore should there arise any need to gather evidence by the defence counsel and should such course of action on the part of the defence counsel entail additional costs, such costs have to be covered by the defence counsel from his own funds. In this respect, the Criminal Law Committee operating within the Slovak Bar Association has made considerable effort to amend applicable legislation with a view to ensuring that access to justice and the right of the accused to defence are well-balanced and guaranteed also by the state, particularly where the defence counsel was appointed by court.