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RIGHTS OF SUSPECTS IN THE SLOVAK REPUBLIC

The legal system of the Slovak Republic follows a Continental-European classical legal system. The first stage of the penal proceedings is the pre-trial procedure, lead by the Police Corps. Investigators verify the facts of the crime which call for penal action to be taken and if justified, the penal case is submitted to the court. The prosecutor performs the legal supervision of the pre-trial actions and in specific cases performs investigative functions. If the results of investigation justify the charge the prosecutor submits the indictment to the penal court.

The Slovak Criminal Procedure Code does not formally recognize distinction between a suspect and an accused and stipulates that any person reasonably suspected of having committed a crime shall be formally accused by authorities (police investigator or prosecutor).

But in fact the Slovak Criminal Procedure Code regulates **rights of person who is suspect and still not accused.**

There are two situations:

1) Such a situation is **detention of a person, who was caught committing a crime or immediately after the crime.** Under § 85, section 2 of the Criminal Procedure Code, *the freedom if a suspect, who was caught committing a crime or immediately after the crime, can be restricted by anybody if it is necessary to ascertain his/her identity, to prevent him/her from escaping or to secure evidence.* The investigator or the police authority who detained the person or to whom a person caught committing a crime was handed over under paragraph 2, shall promptly inform such person about the grounds for detention and conduct the questioning; if the suspicion is cleared or if the grounds for detention disappear because of other reasons, the person shall be immediately released. If the detained person is not released, the investigator shall submit a prosecutor the interrogation report including the ruling on laying the charges and other evidence so as to enable the prosecutor, if appropriate, to file a motion for taking the person into custody. Such motion shall be filed without any delay so as to hand the detained person over to the court not later than within 48 hours from the detention or taking over; otherwise the person shall be released. **The detained person shall have the right to choose a defence counsel and to consult him already at the moment of detention, and to request the presence of the defence counsel at the interrogation under paragraph (4), unless the counsel cannot be reached within the time limit specified therein.**

2) Another situation regulated according to the Criminal Procedure Code is when the prosecutor or police officer can hear **the person on the basis of a criminal report or other report beacuse about the circumstances suggesting that he committed an offense. This**

person has the right to refuse to testify if his testimony could bring the danger of criminal prosecution to himself, his relative in the direct line of descent, his sibling, adopter, adopter, spouse or mate or other persons to whom he is related by family or similar ties and whose prejudice he would justly perceive as his own. This person should be advised about the consequences of libel. **Questioned person is entitled to legal aid of defence counsel.**

In Slovakia **right to have a competent or certified interpreter in the pre-trial stage is granted** (Sec. 28 CPC). Everyone has right to free interpreter/translator, if he or she declares that he does not speak the language of the proceedings. According to Sec. 58 par. 3 CCP the report on the statement of a person who does not speak Slovak shall be drawn up in Slovak. **Foreigners have the same rights as citizens of Slovakia.** There are no special provisions to legal assistance in foreign language. But one of the basic principles of criminal procedure according to the Criminal Procedure Code is that **every person shall have the right to use his mother tongue before the bodies active in criminal proceedings.**

In Slovakia accused enjoy the right to have the assistance of counsel as a standard regulation. According to Sec. 34 CPC the accused shall have the right to elect and consult a counsel also in the course of procedures carried out by the bodies active in criminal proceedings. The accused person has the right for the providing of time and possibility to preparing of defence and for defence alone or by defender.

Right to have a defence counsel shall be introduced before first examination of the suspect (accused). Right to be informed about right to have the counsel is based only on legal basis. Free legal assistance is not always provided. The accused who cannot afford to pay the defence costs shall have the right to a free counsel or to the defence for a reduced legal fee. In case of mandatory defence the suspect must have a counsel. According to Sec. 37 par. 1 CPC the accused shall have a counsel already during pre-trial proceedings if he is remanded in custody, serves an imprisonment sentence or is held for observation at a medical institution; is deprived of legal capacity or his legal capacity is restricted; is a juvenile or is an escaped. A counsel shall be mandatory also if the court or a prosecutor in pre-trial proceedings deems it necessary because they are in doubt whether, in view of his physical or mental handicap, the accused is capable of proper defence or if proceedings is held in respect of an offence punishable by the sentence of a minimum 10 years of imprisonment. The accused himself or his legal representative can elect a counsel. If the accused does not exercise his right to choose a counsel and if a counsel is not chosen for him by his legal representative, a counsel may be chosen for him by a relative in the direct line of descent, his sibling, adopter, adoptee, spouse, common-law spouse or a participating person. If the accused is deprived of legal capacity or has a restricted legal capacity, the aforesaid persons may do so even against his will. If the accused has no counsel in a case where the counsel is mandatory, he shall be given a time limit to elect one. If he fails to elect a counsel within this time limit, he shall be promptly assigned a counsel by the judge, during the period in which the grounds for mandatory defence apply. Court appoints defence counsel from a list of attorneys of Slovak Bar Association. The assigned counsel shall have to accept the appointment. There is no State control on qualifications of those providing free legal assistance, only the Slovak Bar Association may determine defence attorneys.

There are no limitations of free contact between the suspect and the counsel, including telephone calls, correspondence. Police and prosecutor can not be present during meetings of the suspect with his counsel. The waiver of the right to counsel for the defence is provided.

The counsel for the defence has the same procedural rights and powers as the suspect, except of personal rights such as presumption of innocence, right to remain silent. If serious reasons exist, the counsel may be relieved of this duty at his own application or application of the accused and replaced by a substitute.

A counsel **shall give the accused appropriate legal assistance**, effectively apply lawful means and ways of defence for protecting the latter's interests, mainly with the aim of proper and timely clarification of facts proving the innocence of the accused or alleviating his guilt and thereby contribute to a proper clarification and decision of the case. At the stage of pre-trial proceedings, the counsel shall have the right to file motions and petitions and to apply for legal remedies on behalf of the accused, to have access to the files and to participate in the investigation. At any stage of criminal proceedings, the counsel shall have the right to request an advance copy or transcript of the minutes on each procedure of criminal proceedings. The bodies active in criminal proceedings shall have to grant such request; it may only be refused on technical grounds. He shall indemnify the State for the costs involved. The counsel may examine every witness after examination by authority acting in criminal proceedings. The right to get a copy of documents may be refused for serious reasons except stage of conclusion of investigation. **No inspections and searches** by the prosecution **in the defence's offices** are admitted. In general **tapping of telephone calls or seizure of correspondence** between the accused and, the counsel or between the different people of the defence counsel is not admitted. Information gained from the tapping of telephone calls or seizure of correspondence between the accused and the counsel cannot be used for the purpose of criminal process and must be destroyed. This does not refer to information regarding issues when the defence counsel is not in a position of the counsel of the suspect. The evidence gained from inspections, searches, seizures or wiretapping carried out with the use of coercion or threat of coercion can be used only against the person who has used/carried out such coercion or threat of coercion.

In Slovakia, authority acting in criminal proceedings has an obligation to **present a charge** of committing the offence and proceed with criminal prosecution immediately after it will establish facts indicating that a criminal act was committed and if there are reasonable grounds to believe that it was committed by a particular person. The ruling on laying the charges shall give the description of the act being investigated, the place, date and/or other circumstances of such act so as to prevent confusion with another act; it shall specify which criminal offence was committed through such act giving its legal nomenclature and the applicable provisions of the Penal Act as well as the charges on which the accused is being prosecuted.

Charges have to be presented in written form and the suspect – already accused has a right to receive copy of charges. If there are grounds for changing or admitting charges the police has to notify in written. There is no **time-limitation for filing a charge** against the suspect. It is usually the competence of the police to present a charge in pre-trial stage but such a decision can be questioned before the prosecutor. If the person is suspected, the authorities acting in criminal proceeding must communicate him his personal rights before first questioning. If the State fails in informing to the suspect his/her rights it is a cause for refuse the indictment by the court.

The suspect has unconditional right to refuse answers leading to **self-incrimination**. He has also the right to remain silent. There is no legal responsibility for false testimony of the suspect, but responsibility for false accusation can be introduced. **Ne bis in idem** can be

argued at any stage of the proceedings if the same charges against the same person has already been decided by final decision (not only judgement).

In Slovakia during the interrogation of the suspect the main rights for the defence are as follows: right to remain silent and not to answer a question, the right to counsel, right to avoid self-incrimination. The accused may be in no way forced to make a statement or confession. If a defence counsel informs an investigator of his **intention to take part in an investigation procedure**, the investigator shall have the obligation to give him an advance notice of the time and place of the procedure except when such notice cannot be ensured and the procedure cannot be postponed. In case of **police or prosecutors interrogation of witnesses** the defence has the right to be apprised in advance if requested to be notified of any operation taken by the police or prosecutor during the pre-trial stage. The defence attorney can however be present during such an interrogation if will appear in time. If the counsel attends the interrogation, she/he can submit to the police or to the prosecutor observations, requests, reserves. The defence counsel can also interrogate the suspect or any other person, to pose questions to the accused and to other interrogated persons, but only after the body concerned has completed interrogation and handed him the floor.

Both accused and his defence counsel have **the right to access to files of the investigation**, including evidence and data collected during investigation, except for the voting report and those sections of the report that contain data on the identity of an undercover agent. They have the right to get copy of reports (including operation he was not informed about), to make excerpts and notes, and to have duplicates of the files and the parts thereof made at their own expense.

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 at the trial, and to have the last word at the trial
- Have access to an interpreter and translator if he does not have command of the language in which the proceedings are conducted.