

Slovakia

Questionnaire of the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

Question 1.: The legal basis for the protection of rights and freedoms of human rights defenders

The legal basis for the protection of rights and freedoms of human rights defenders has been created by the Constitution of the Slovak Republic (No. 460/1992 Coll.), Bill of fundamental rights and freedoms (No. 23/1991 Coll.), as well as international human rights treaties binding the Slovak Republic.

International treaties on human rights and fundamental freedoms, international treaties whose executions does not require an act and international treaties which directly establish rights or obligations of natural persons or juridical persons and which were ratified and promulgated as required by law shall take precedence over the laws (Art. 7 par. 5 of the Constitution).

The non-discrimination clause (prohibition of discrimination) embodied in the Constitution applies to every person independently of his/her legal and other status. The Constitution and national legislation is fully in line with international human rights standards and law including the Declaration on Human Rights Defenders.

Pursuant to Art. 12 par. 2 of the Constitution "basic rights and freedoms on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, color of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or another status." No one must be harmed, preferred, or discriminated against on these grounds No one must be restricted in his rights because he upholds his basic rights and freedoms (Art. 12 par. 4 of the Constitution).

The Criminal Code strictly follows the basic legal principles "nullum crimen sine lege" and "nulla poena sine lege". The provisions of the Criminal Code are not ambiguous or too broad and are not abused for the persecution of human rights defenders and restricting their activities.

b) Pursuant to Art. 46 par. 1 and 2 of the Constitution everyone may claim by the established legal procedure his right to an independent and impartial court hearing and, in cases designated by law, to another body of the Slovak Republic. Anyone who claims to have been deprived of his rights by a decision of a public administration body may appeal to the court for it to reexamine the lawfulness of that decision, unless specified otherwise by law. The reexamination of decisions concerning basic rights and freedoms must not, however, be excluded from the court's authority.

Conditions and details concerning judicial and other legal protection has been set out in various laws. For instance, participants to civil judicial proceedings have the equal status (Art. 18 of Act No. 99/1963 Code of Civil Procedure as amended). Parties to the (criminal) court proceedings are equal. (Art. 2 par. 14 of Act No. 301/2005 Code of Criminal Procedure as amended).

Question 2.: Security of human rights defenders

In Slovakia, the situation of human rights defenders in terms of their security is satisfactory. Occasionally, cases of potential threat (e.g. in the form of verbal attacks or in an electronic form) occur in the context of extremism against the third sector. No cases of abuse of human rights defenders by state authorities were reported.

As regards the Slovak National Centre for Human Rights (National Human Rights Institution established in line with the Paris Principles) and non-governmental and non-profit organizations, monitoring activities and personal contacts with individual complainants might result in risky situations. These situations, however, are difficult to prevent as complainants often act unforeseeably due to difficult situation or various psychological problems.

As regards the Public Defender of Rights and his representatives, their security was violated in isolated cases by natural persons. The Office of the Public Defender of Rights has registered several cases of verbal, as well as written, threats and attacks in the process of submitting complaint personally in the Office of the Public Defender of Rights (for example by imprisoned individuals).

There are no law-suits reported in this connection, although difficult substantiation and long legal proceedings might discourage human rights defenders from filing a complaint. From a legal point of view, moreover, there is no legal definition of a "human rights defenders" and thus no statistics can be provided.

Question 3.: Legislative and institutional measures

Based on practical experience, the situation of human rights defenders in Slovakia does not require any additional legislative or institutional measures. Existing legal measures protecting defenders of human rights are sufficient.

Although there is no legal definition of the term „human rights defender“ in the legal order of Slovakia, the Slovak legislation allows various forms of assembly (demonstrations, petitions, etc.); the right to peaceful assembly and the freedom of association are guaranteed under the Constitution of the Slovak Republic. Moreover, the Constitution guarantees citizens the right to resist anyone who would try to eliminate the democratic order of fundamental human rights and freedoms, if the activities of constitutional authorities and the effective use of legal means are rendered impossible ('ius resistendi').

Note: The usual understanding of the term is derived from the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (known as the Declaration on human rights defenders”).

Question 4. – 8.:

The public defender of rights (ombudsman) represents one of the key components of extrajudicial human rights protection mechanisms in Slovakia. Pursuant to the Constitution, the ombudsman is an independent body whose task is to protect the fundamental rights and freedoms of natural and legal persons in the proceedings before government authorities and other public bodies if their activity, decisions or inactivity contradicts the law. The current regulations guarantee the independence of the Public Defender of Rights as a constitutional body. The Public Defender of Rights is not granted immunity, which is nevertheless not considered a problem. The Office of Public Defender of Rights has adopted internal measures and regulations (considered sufficient) to provide better security to the Public Defender of Rights, his representatives and all employees of the Office:

- verbal complaints are received by employees in offices with walls made from clear glass and under the supervision of security services;
- there is a rule of two representatives of the Office receiving verbal complaints;
- the employees are trained in special communication skills to deal with people with aggressive behaviour.

In relation to the above-mentioned potential threat in the context of extremism against the third sector, it is worth noting the amendments to the Slovak Criminal Code. The contents of the amendment to the Criminal Code introducing the extremist criminal offences implement the European Framework Decision of 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law and reflect the future commitments of the Slovak Republic resulting from the Additional Protocol to the Council of Europe Convention on Cybercrime. Introduction of the extremist criminal offences also seeks to achieve one of the main goals of criminal law - its preventive role. The amendment introduced new criminal offences of extremism, which are as follows: Production, spreading, and possession of extremist materials; Incitement, defamation, and threat to person for their belonging to race, nation, nationality, colour of skin, ethnic group or origin.

To this end, any material may be considered extremist only when it is produced, spread or possessed with the intent to incite to hatred, violence or unreasonably different treatment of the group of persons or individuals for their belonging to race, nationality, colour of skin, ethnic group, origin or for their religion. This circumstance has to be proven beyond the reasonable doubts. At the same time, any criminal offence may be considered extremist only when committed with the extremist bias, i.e. with the intent to publicly incite to violence or hate against the group of persons or the individual because of their race, nationality, colour of skin, ethnic group, origin or because of their religion or the commission of a criminal offence from the national, ethnic or racial hatred or hatred because of the colour of skin.

The Witness Protection Act nr. 256/1998 Coll. as amended, regulates conditions and contains policy options of protection and assistance to threatened witnesses, protected witnesses and people close to them, who testify or give evidence and whose life or health is subject to threats by offenders of most serious crimes or organized crime. The Act deals with the criteria for taking a witness into a protection program, with provision of the necessary safety measures, assistance to threatened witnesses and other related measures. The Act provides for definition of „threatened witness“, which includes also persons close to threatened witness, who are enlisted in the proposal for protection or proposal for adoption of safety measures. „Protected witness“ is also a person close to protected witness, who is also included in a protection program. The Act does not specifically mention a category of „human rights defenders“ because the decisive criteria for inclusion into a protection program are the procedural standing of witnesses in criminal proceedings and a reasoned fear of threat in connection with a testimony in such proceedings.

The Slovak Republic respects the EU Guidelines on Human Rights Defenders (2004) and actively supports the EU activities aimed at easing the situation of human rights defenders level. At the national level, the activities of the Slovak institutions are focused at the domestic situation.