

Contribution from the SI State Attorney's Office for the 2024 Rule of Law Report

The State Attorney's Office of the Republic of Slovenia (State Attorney's Office) is an independent and autonomous judicial body, which implements the tasks of legal advice and representation of the Republic of Slovenia before all national, foreign and international courts, foreign and international courts of arbitration and administrative bodies. The State Attorney's Office is obliged by law to implement judicial tasks that directly realise or protect many constitutionally protected categories, and above all, it is obliged by law to enhance the functioning of the rule of law, which means that the legislator granted the Office an important role in the functioning of the system of checks and balances. The State Attorney's Office is also an independent representative of the public interest. As per the functions it implements (i.e. representative, negotiating, advisory and institutional), it is possible to place the State Attorney's Office among the holders of the executive function, which is comparable with that of the state prosecutor.

One of the essential tasks of the State Attorney's Office is an independent legal consideration of issues that arise in the context of representation or legal advice, including the representation of this independent legal assessment vis-à-vis the represented entity. Such professionally substantiated and procedurally correct legal assessment must not be formed under any kind of external influence, unauthorised instructions or pressures and it must also not be sanctioned and penalised. All of the above subsequently reduces the credibility of the represented entity, undermines the country's reputation and destroys the rule of law right at its foundations. When providing, justifying and discussing their independent legal assessment against the represented entity, a state attorney must be protected. Protection of this independence is all the more important because the entities represented by the State Attorney's Office are the representatives of all three branches of power, and the State Attorney's Office, as a state body, depends on the legislative and executive branches of power with regard to its position and normative and substantive arrangements. A state attorney is thus obliged to represent their independent consideration and decisions in relation to the entities on which the State Attorney's Office depends in some way, which makes the position of state attorneys specific and more sensitive, while the implementation of their powers requires special systemic protection. Strong functional independence enables a state attorney to contribute to the functioning of the system of checks and balances and thus prevents the State Attorney's Office from becoming a means for inadmissible interference of the executive branch in the legislative, and above all, in the judicial branch of power.

A state must have a representative who always places the interests of the state before their own and oversees the correctness and legality of the legal positions provided. With legal assessment of a case, the representatives ensure legal protection of the interests of the Republic of Slovenia, which exceed the significance of individual cases. The code of conduct is thus the public interest and not the interest of an individual, which may also be in conflict with the public interest. Similarly, to the representative of the state in criminal proceedings, the representative of the state in civil, economic, administrative and other proceedings must be, as an exceptionally professional person, independent and impartial when conducting their work and bound only by the Constitution and law, the general principles of

international law and the ratified and published international treaties with regard to legal issues, which is the foundation of all judicial functions. The task of the representative of the state is primarily to realise the interest of the represented entity, but that does not always denote an automatic defence of the state's actions since the representative must always pursue the realisation of the principle of the rule of law in their work, which also requires protection against the violation of their independence.

The current law governing the activities of state attorneys, i. e. the State Attorney's Office Act (ZDOdv), effective since 2017, does not guarantee a legal framework as described above. The experience with the application of the ZDOdv confirmed that the efficient implementation of the most important powers of state attorneys and the State Attorney's Office as a whole, particularly in the circumstances in which the principle of rule of law was endangered the most, was hindered after the state attorneys were classified as public employees. The ZDOdv generates adverse effects from those it was supposed to formally pursue, i. e. improved autonomy of the body, professional independence of a state attorney and their protection of the rule of law if possible reasons of interest prevail. The existing system does not include safeguards that would prevent unauthorised pressures and fails to provide a sufficiently stable and safe environment in which the state attorney can operate professionally, legally and in a constitutionally consistent manner. The experts have been unanimously pointing out this issue since 2016 and particularly recently. Therefore, the State Attorney's Office is actively working to reform its institutional framework.

The proposed reform aims at enhanced responsibility, independence and protection of state attorneys by means of changing their status from public employees to officials. This will enable an effective use of legal safeguards that should also be introduced by the reform, and namely legal safeguards to reduce the possibility of obvious abuse of procedural rights by the state as a participant in court proceedings and ensure that state attorneys will be able to fully implement their mission, which particularly lies in the enhancement of the functioning of the rule of law, protection of the system of checks and balances and the establishment of trust in the judiciary by protecting constitutional interests and public interest.

The reform should also provide for anti-corruption effects. From the viewpoint of preventing a conflict of interest, the classification of state attorneys as per the ZDOdv and the two-tier system in which they perform their tasks has proven risky, since those who implement their tasks as public employees are not obliged to report changes in their assets to the Commission for the Prevention of Corruption, whereas state attorneys/officials are obliged to do so. Nevertheless, both categories of state attorneys deal with claims that may be worth several hundred million euros. A uniform classification of state attorneys among officials, which is proposed with the reform of the ZDOdv, would eliminate this anomaly.

If the ZDOdv is reformed as proposed, this will enable the State Attorney's Office to contribute even more to overall efficiency of the judicial system in Slovenia. Through amicable resolution of disputes in preliminary proceedings the State Attorney's Office already reduces workload of courts and thereby contributes to the efficiency of courts. These disputes never come to court. Within court proceedings, the State Attorney's Office also strives for an amicable settlement of disputes. For example, the State Attorney's Office proposed the implementation of a sample procedure in a mass social dispute (more than 200 claims) in 2023 in which vulnerable and socially endangered people with minimum income

stood against the state. The State Attorney's Office conducted the procedure until the decision of the Supreme Court of the Republic of Slovenia and then, based on the court's decision and complex harmonisation between all stakeholders, attained the consent to amicably settle all the disputes by concluding court settlements on the basis of which the social and economic situation of plaintiffs remained unchanged. Subsequently, the State Attorney's Office contributed significantly to the enhancement of the rule of law and uniform application of law since an important legal issue was resolved in the procedure, the courts were relieved from deciding in more than 200 cases and the economic and socially vulnerable group of citizens with minimum income was also efficiently protected.

The workload of courts was also reduced when dealing with claims against the Republic of Slovenia due to the violation of the right to trial without undue delay as per the ZVPSBNO (in connection with Article 6 of the ECHR and the Lukenda case), since the State Attorney's Office resolved the majority of these cases amicably in preliminary proceedings. Since the enforcement of the ZVPSBNO in 2007 and until mid-April 2023, the State Attorney's Office received 3,108 cases as per the ZVPSBNO and only 266 of these cases were later considered in further court proceedings.

The State Attorney's Office is convinced that the reform of its institutional framework can significantly increase its efficiency in the field of peaceful resolution of disputes and shift the focus of its activities to the field of preventive action within the Slovenian judiciary. Therefore, the State Attorney's Office will proceed with all reform related activities also in 2024.