Position of the Public Defender of Rights in the Slovak Republic,
His Independence and the Conflict of Interests

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Establishment of the institute of the public defender of rights

The legal basis for establishment of new constitutional body of the public defender of rights was passing the constitutional act No. 90/2001 Coll. dated February 23, 2001, amending and supplementing the Constitution of the Slovak Republic No. 460/1992 Coll. as amended by later regulations. There was added the second section named the Public Defender of Rights in the article 151a into eight chapter of the Constitution of the Slovak Republic. On the basis of that, the National Council of the Slovak Republic has passed the Act No. 564/2001 Coll. on the Public Defender of Rights, laying down details on his election and dismissal, his scope of authority, the conditions of performing his function, the manner of providing legal protection and enforcement of the rights of natural persons and legal entities. On March 19, 2002, the legislature has elected first public defender of rights in secret ballot.

The public defender of rights is an independent body protecting in the scope and in manner laid down by the law the fundamental rights and freedoms of natural persons and legal entities in the proceedings in front of public administration authorities and other public authority bodies, when activities, decision making or inactivity of the bodies are in contradiction with the legal order.

In case of failure to perform their obligations, he may participate on exercising liability towards them. It is an constitutional obligation that public administration authorities provide the public defender of rights with needed co-action. Independent position of the public defender of rights is expressed clearly and indubitably in the Constitution of the Slovak Republic. He is not dependent on any other power, authority or institution being part of the political system of the Slovak Republic.

The public defender of rights is elected by the National Council of the Slovak Republic and he is accountable to it. The National Council of the Slovak Republic may also dismiss him, however, only in case his health condition does not allow him to duly perform
the duties arising from the function in the long-term, however at least during three months. Otherwise, the public defender of rights is not dismissible from his office.

In this relation, also termination of the office should be mentioned, which is possible, prior to lapse of the term of office, only on the basis of conditions laid down in the Act on the Public Defender of Rights. It regards resignation due to loss of eligibility to be elected (conditions for his election are not fulfilled), case of sentencing on the ground of wilful criminal offence and the sentence has not entered into validity or when he was sentenced on the ground of criminal offence and a court has not decided on conditional reprieve of imprisonment punishment in his case. Also the case when he performs activity irreconcilable with the performance of his office and death are another reasons of terminating the office.

In the relation with independence of the public defender of rights, it should be mentioned, that said attribute would be reinforced also by the form of financial ensuring from separate chapter of the state budget, being not the case in the Slovak Republic. We continually try to eliminate this facts my means of amending the Act on the Public Defender of Rights.

The principle of independence of the public defender of rights is emphasized also in the separate act on the public defender of rights (the Act No. 564/2001 Coll.).

The independence of the public defender of rights is enhanced also by his authorization to file a motion to the Constitutional Court of the Slovak Republic in case he finds incompatibility of generally binding legal regulation with fundamental rights and freedoms.

**Incompatibility** of the function of the public defender of rights with the performance of the function of the President of the Slovak Republic, a member of the National Council of the Slovak Republic, a member of the Government, chairman or president of a central body of the state administration of the Slovak Republic, a president of the Supreme Audit Office of the Slovak Republic or vice-president of the Supreme Audit Office of the Slovak Republic, a judge of the Constitutional Court of the Slovak Republic, a judge, a prosecutor, a member of intelligence service, a member of the Police Corps or other armed corps, and with a function in public administration authorities is not negligible fact relating to the independence at performance of the office of the public defender of rights. Incompatibility is laid down by the Act on the Public Defender of Rights, which further lays down in this relation, that the public defender of rights may not perform, during performance of the function, any other gainful function, he may neither conduct business activities nor perform other gainful activity save
administration of his own property or property of his minor children, scientific, pedagogical, literary and artistic activities, provided that such activities do not interfere with due performance and dignity of the function and do not threaten the trust in the impartiality and independence of public defender of rights.

Failure to meet mentioned facts means obstacle in the performance of the function of the public defender of rights.

**To scope of authority of the public defender of rights**

The public defender of rights, as the independent body, participates on the protection of the fundamental rights and freedoms of natural persons and legal entities with respect to the proceedings, decision-making or inactivity of public administration authorities, when such proceedings, decision-making or inactivity is in contradiction with the legal order or the principles of the democratic state and the rule of law.

The scope of authority of the public defender of rights applies to:

a) state administration authorities,

b) territorial self-government bodies,

c) legal entities and natural persons, making decisions on the rights and obligations of natural persons and legal persons in the area of public administration pursuant to separate act.

The scope of authority of the public defender of rights does not apply to the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak Republic, the Constitutional Court of the Slovak Republic, the Supreme Audit Office of the Slovak Republic, intelligence services, decision-making competences of investigators of the Police Corps, prosecution and courts save state administration of courts and the reasons, where disciplinary misdemeanour of a judge is presumed. The scope of authority of the public defender of rights does not apply also to the matters of operational or mobilization nature.

Anybody who believes that his fundamental rights and freedoms were infringed in contradiction to the legal order or principles of the democratic state and the rule of law in relation to the proceedings, decision-making or inactivity of a public administration authorities may turn to the public defender of rights.
On some knowledge of the public defender of rights

On the basis of examination of motions, whereby natural persons and legal entities are turning to the public defender of rights, it could be observed, that their problems at exercising their rights in relation to the public administration should be studied in two perspectives:

1. in the perspective of natural persons and legal entities exercising their rights or aiming to exercise them and

2. in the perspective of public administration authorities making decisions on the rights.

In the perspective of natural persons and legal entities exercising their rights, we regard insufficient legal knowledge as the priority problem in this process. We ascribe priority to it because it is one of frequent basic shortcomings or misunderstandings being obstacle at exercising rights.

We have found that in particular natural person often do not know their rights and freedoms, but also obligations. They are not aware of forms and ways how to act, how to proceed. They are not exercising their rights in time, at relevant authority, in relevant form. Many times, they do not have knowledge of relevant legal regulation or they do not understand its meaning. In this relations, it is necessary to emphasize that knowledge of basic legal regulations is the first precondition so that the right could be also exercised in due manner. Knowledge of law is necessary precondition also for correct understanding of the content of decisions, opinions, conclusions and motions of relevant authorities of the public administration, making decision on rights of natural persons and legal entities. Last but not least, basic orientation in legal regulations helps also to prevent useless misunderstandings occurring between natural persons and legal entities and public administration authorities at exercising their rights.

Do we have possibilities to remove insufficient legal knowledge of natural persons and legal entities? Of course we have, however, at choosing tools, it is necessary to consider which groups of natural persons and legal entities are involved. Legal public education residing in adequate legal education and promotion is proven and irreplaceable tool, on which also non-governmental organizations, foundations and media have the possibility to participate in cooperation with public administration.

Legal public education is necessary, because the legal system is rather complicated, unclear and obscure in some respects, subject to different interpretations and also applications.
Frequent amendments disrupt its stability to the certain degree. One of causes is that during creation of legal regulations (whether on the highest level or on lower levels), legislation rules of its creation are not respected and not observed in some cases.

Moreover, also knowledge resulted from examining motions of natural persons and legal entities having character of serious and complicated legal cases, that it is substantiated for successfulness of their solving to provide due complex expert legal assistance of the law by knowledgeable person to natural person. Many citizens do not have possibility to use qualified expert legal assistance due to its financial inaccessibility. Simply said, legal service of an advocate or a commercial lawyer is too expensive for them and therefore virtually inaccessible. Moreover, we notice complaints of citizens to its quality in cases when they have use it. In relation to exercising rights, the fact that natural persons and legal persons show significant mistrust towards proceedings, decisions and opinions of public administration authorities, but also many other bodies, could not be overlooked. This results in particular from suspicions that relevant authorities fail to observe legal regulations, they incorrectly apply them, make biased decisions, that favouritism and corruption continue to exist. On the other side, in the perspective of actions of natural persons and legal entities, inadequate behaviour showing in particular by impatience, intolerance, often also by actions being at variance with basic principles of decency, could not be ignored.

In the perspective of public administration authorities, the main shortcoming is when their stuff and personnel do not realize that they are here for needs of natural persons and legal entities, not contrariwise. Frequent complaints are following:

a) arrogant behaviour of public administration personnel towards natural persons and legal entities,

b) inability of said personnel to communicate with a citizen on proper level (absence of patience, helpfulness, politeness, comprehensibility of instructions, opinions, decisions, indifference, negligence etc.),

c) mistrust of public administration personnel towards natural persons and legal entities,

d) passing unclear, hardly comprehensible legal regulations, their insufficient making public or promoting them, insufficient legal public education,

e) complexity and long duration of decision-making process (protraction, frequent inactivity, concealing truth etc.).
Mentioned circumstances unnecessarily creates tension between natural persons and legal entities and public administration authorities.

To some theoretical and practical issues of activity of the public defender of rights

The decision on establishing the institute of the public defender of rights aroused polemic on its necessity and purport in expert as well as laic spheres. In this regard, opinions were not and are not till now uniform. Opinions casting doubts upon existence of the institute are still present. However, this polemic and its meaning is nowadays only in academic aspect. It is necessary to mention in particular subject discussions on position of the public defender of rights, its scope of authority, relationships to prosecution and the Constitutional Court of the Slovak Republic.

Latter constitutional bodies pertain, as well as the public defender of rights, into the system of law protection authorities in our republic. They are not competitors; with their activity, they are often significantly complement to each other, and their cooperation or the existence itself is sometimes irreplaceable beyond any doubt. Therefore, in this relation, we take the liberty to briefly point out some facts confirming mentioned statements.

First, we will give our opinion to the relationship of the Constitutional Court of the Slovak Republic and the public defender of rights and their competences. The Constitutional Court is the body of law protection and its basic role is to examine cases of violating the Constitution of the Slovak Republic. The scope of authority of the public defender of rights extends further – it exceeds cases of breaching a law. Its role is also to find out faults, incorrect proceedings of the public administration, while these are perceived broadly – from unfair behaviour of some clerk to fundamental structural issues of the administration itself. While these incorrect, faulty procedures had not necessarily be a breach of a law. It is possible to turn to the Constitutional Court of the Slovak Republic only upon using all legal means. A citizen can come to the public defender of rights any time and it is not necessary for him/her to first use all other legal means. Therefore, the Constitutional Court can not replace the public defender of rights in any case.

Even before passing the Act on the Public Defender of Rights, there was detailed discussion about the need of this institute according to the existence and the scope of activity of prosecution. This tendency is carried over to the present also because so-called general
supervision of prosecution remained in existence. However, the public defender of rights has even certain authorizations and obligations towards prosecution bodies. It is not a negligible issue, having besides theoretical aspects also practical and realization consequences and it is necessary to satisfactorily solve it in short time.

When we consider current problems of theoretical and practical nature in relation to the activity of the public defender of rights, we cannot neglect the existence of the Act No. 152/1998 Coll. on Complaints. It was considered, that after establishing the institute of public defender of rights, just he would be able to assume some powers specified in the said act. We regard such opinion as corrects and it would be a contribution to confirm it also in legislation. Similar “mutual settlement” would be necessary also in connection with presently valid Act No. 10/2996 Coll. on Control in State Administration.

Also actions of the public defender of rights on his own initiative, and one or several (specialized) public defenders of rights belong among issues, about which discussions and polemics are arising. As for the first issue, it should be observed that also in such case, the protection of subjective rights would be concerned. The public defender of rights has to adopt the belief that procedure of public administration authorities is not in compliance with the legal order or principles of democratic state and the rule of law and then appeal to eliminate this shortcoming. As for second issue, we hold the opinion that one public defender of rights as laid down by present act (No. 564/2001 Coll.) is sufficient in present situation.

Conclusion

The institute of the public defender of rights exists only for short time. However, already nowadays, the work of its office could be evaluated positively - as extraordinary interesting, but also extraordinary demanding - whether as for expert as well as human perspective. It brings interesting knowledge and it informs the broad public about it in adequate manner. Functional constitutional institution has been built and it performs its activity without any politic intervention.

At his activity, the public defender of rights abides by the Constitution of the Slovak Republic and whole legal order, from what an obligation to control public administration authorities results – whether they proceed at their activity, at their decision making in compliance with the Constitution of the Slovak Republic, laws and other legal regulations and principles of
democratic state and the rule of law. It also examines whether public state authorities are active or inactive. The public defender of rights is constitutional, apolitical, independent, democratic and elected body serving citizens, serving for eliminating imperfections caused by bureaucratic apparatus. He is the control body sui generis in relation to public administration authorities, realizing his obligations in compliance with the legal order of the Slovak Republic, as well as ethical principles. His scope of authority corresponds to the European standard.