

**Country report on behalf of the
Slovak Bar Association
on the occasion of**



**51st European Conference of
Presidents of Bar Associations
and Law Societies in Vienna
17th February 2023**

Governing bodies and statistics

The Slovak Bar Association Presidency elected in 2021 is reaching the first half of its mandate in 2023. Given the appointment of the immediate past President Viliam Karas as Minister of Justice in September 2022, the leadership of the Slovak Bar Association has been entrusted in the newly appointed President Martin Puchalla.

Currently the number of active registered lawyers is 6513 (increase by 73) and there are 1797 trainee lawyers (decrease by 21) with well-balanced gender ratio (55% women). There are also about 253 registered lawyers with foreign status (EU lawyers, foreign lawyers from OECD countries and international practitioners from WTO countries) (increase by 24).

- **Mutual dialogue**

The interest of the Slovak Bar Association is to support the development of the rule of law and deepen trust in judicial institutions. In the past year, the Bar representatives had the opportunity to establish a good partnership discussion with representatives of the highest judicial authorities and the academic community, which confirmed that we share the same values in the fundamental questions related to the rule of law. This is a potential that is a good starting point for the future so that we can believe in the gradual raising of the ethos of the legal professions in Slovakia and in strengthening the expert discussion with the view to establish laws that are well-balanced and rule of law compliant.¹

General meetings among Supreme Court, Supreme Administrative Court, General Prosecutors Office and the Slovak Bar Association also lead to establishment of Criminal Law Expert Platform that convened its meetings at the premises of the Bar once every one or two months with the participation of Special Prosecutors Office as well. The main topic of discussions was the latest legal draft of the Criminal Code and Criminal Procedure Code that significantly reforms the whole system of criminal procedure but was not preceded by the expert discussions at the ministry.²

At the autumn meeting with the new Minister of Justice, the representatives of the Supreme Court of the Slovak Republic, the General Prosecutor's Office of the Slovak Republic and the SBA adopted a joint statement: *"We note that the Slovak criminal policy is currently distorted by disproportionately high criminal rates, which in some cases deviate from European standards. At the same time, we point out that there is a room for better use of the alternative punishments potential and better work in the field of probation and mediation. With the same urgency, we point out the need to continue with further humanization of the conditions of imprisonment and custody. We welcome all efforts aimed at approximation to the standards valid in advanced European democracies. In conclusion, we express the wish that fundamental changes in criminal policy are adopted on the basis of the widest possible expert consensus while simultaneously respecting the rules of the regular legislative process."*³ However, the stakeholders emphasized that if the main expert comments are taken into account, they are convinced that the upcoming reform of the criminal codes can be a good chance to move Slovak criminal law more towards the proven principles of the European legal tradition.

¹ More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1183509/_event

² More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1291957/_event

³ More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1493306/_event

- **Independence**

Practicing the legal profession freely and independently is the most valuable asset we have as a legal profession and represents an irreplaceable value for the functioning of the rule of law as well as the independence of the judiciary. We are obliged to continue to protect our independence with all our strength, not for our own interests, but above all so that we can live in a country where people's rights are effectively protected and where there is respect for the rule of law.

Experts from the Supreme Court, General Prosecutor's Office, Slovak Bar Association and law faculties jointly agreed on the basic principles without which the purpose of criminal proceedings cannot be successfully fulfilled (i.e. fair punishment of offenders while simultaneously respecting fundamental rights and freedoms). At the conference, jointly organized by the Comenius University Law Faculty and the Slovak Bar Association, all representatives met and published the following call: "*The State - represented primarily by the legislative and executive powers - is obliged to create such a legal framework for activities of law enforcement bodies, courts and defense lawyers that it is possible to conduct criminal proceedings effectively, but never at the expense of reducing the fundamental rights and freedoms guaranteed by the Constitution of the Slovak Republic and international conventions. At the same time, effective protection of rights must also include consistent respect for not only the autonomous status of law enforcement bodies, the independence of courts and judges, but also the independent exercise of the legal profession and the independence of the legal profession.*"⁴

- **Confidentiality**

In the past period, the SBA was particularly sensitive to increasing number of cases of criminalization of the legal profession⁵, including the misuse of operational technology for uncovering information which is subject to professional confidentiality of lawyers. We also witnessed the illegal dissemination of alleged e-mails with communication between a client and a lawyer in one of the criminal cases closely followed by the media. These are worrying trends that indicate a threat to the fundamental right of people to communicate confidentially with lawyers. Confidentiality of communication between lawyer and client is a basic prerequisite for the proper provision of legal services. The Slovak Bar Association therefore strongly condemns any interference with confidential communication between a lawyer and a client, and its dissemination, which is not supported by law. In the past year, during a police search of the law office premises, the police seized electronic devices and electronic carriers with the data of a number of clients which had no connection with the investigated criminal matter. This happened despite repeated warnings of the Bar's representative, present at the actions in accordance with the law, that it is a procedure in direct contradiction to the Criminal Code and the jurisprudence of the Constitutional Court of the Slovak Republic. In one of the cases, even the present IT expert confirmed in the minutes that the data sought in the given criminal case could be selected directly on the spot in the presence of Bar's representative. The minutes contain his clear opinion on the technical feasibility of such a safe and legally correct procedure. It was nevertheless rejected by the investigator. In another case, the expert was not even present contrary to the court order. The possible scope of the violation of the law in these cases is alarming. The Slovak Bar Association fully respects the power of authorities to investigate criminal activity even among lawyers. It is in our interest that the necessary catharsis takes place. However, in a democratic country, it cannot be accepted if gross illegal practices are used in the detection of criminal activity, which are in direct contradiction to the jurisprudence of the Constitutional Court of the Slovak Republic. The SBA is convinced that this needs to be clearly resolved by legislation. The jurisprudence of the Constitutional Court of the Slovak Republic is obviously not respected by the law enforcement authorities. Their illegal action may have an impact on many clients who believed that the right to defense included the protection of communications between lawyer and client. The Bar will therefore consider all available steps either on domestic or international level that could lead to the protection of citizens' fundamental rights to legal aid.

- **Quality of legal services**

A legislative proposal was submitted to the parliament, the subject of which was introduction of a new group of legal service providers - legal advisers. In order to provide professional legal advice, according to the proposal, it would be sufficient to have a university degree in the field of law and it was not necessary to complete further education and practice or bear responsibility for their actions. There was no professional discussion about the proposal or impact analysis. By adoption of the proposal, the

⁴ More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1368937/_event

⁵ More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1363170/_event

parliament would not only weaken the quality of legal services and protection of citizens as consumer of legal services but it would in fact legalize the provision of legal services without established ethical principles that protect recipients/consumers of legal services, without disciplinary responsibility and without material liability - without guarantee of liability insurance for damage caused in the course of performing the profession. At present such action is considered a criminal offence. This proposal was not adopted.

- **Other legislative proposals**

The Bar welcomed that the Ministry decided to postpone the date of effect of the so-called “new court map”. We believe that the postponement will prevent the courts from becoming dysfunctional as a result of delays in preparations, and simultaneously, more time will be provided to clarify the method of filling new judicial positions. The transfer of judges between courts must be carried out transparently and in such a way that there can be no arbitrary interference with judicial independence, and thus also with the right of the participants to a lawful judge. The SBA also called for the renewal of the necessary professional dialogue, within which the possibilities of further material corrections of the reform (for example, the establishment of municipal courts) would be explored.⁶

Activities in support of Ukrainian citizens and Ukrainian lawyers

The Slovak Bar Association continues to provide legal assistance to displaced persons from Ukraine. The Bar maintains the list of 145 lawyers helping pro bono to Ukrainian nationals and a helpline via e-mail and phone.⁷

In an attempt to extend the support to Ukrainian lawyers on the territory of Slovakia, an internship program was launched in May 2022. By the end of 2022, in cooperation with The Foundation of the Slovak Legal Profession that supported the internships by providing a stipend to each intern, we managed to implement 60 monthly internships for Ukrainian colleagues in law firms in 12 regions in Slovakia.

Responding to the interest of Ukrainian colleagues, the SBA organized a hybrid seminar with lectures on practical aspects of provision of legal services in Slovakia (possibility of work, tax issues, financial assistance, etc.). Ukrainian colleagues were also invited to the networking events, which met with great success and response.

The representative of the SBA participated in the seminar of the Council of Europe (Council of Europe DG Human Rights and Rule of Law), the EU and UNHCR, the UN Refugee Agency in Warsaw on the transposition of the directive on temporary protection and challenges in providing legal aid to migrants.

The Bar Office has been tutoring the Asylum and Migration e-Desk focused on the temporary protection issues at the Council of Europe HELP online training platform.

For Slovak lawyers, the Bar prepared advisory interpretation opinions regarding the possibility of providing legal services to persons on sanction lists.

Involvement in EU projects to support young lawyers

The Slovak Bar Association is actively involved as a partner institution in the following projects that attracted very positive feedback from young members of the Bar Association:

- LAWYEREX – popular short-term exchange programme for young lawyers coordinated by ELF
- YOUNG LAWYERS CONTEST and YOUNG LAWYERS ACADEMY – EU law and networking oriented contest and intensive training in EU law coordinated by ERA and focusing on for trainee lawyers. The Bar hosted one of the YLC semi-finals in Bratislava.
- HELP online training courses on the Council of Europe platform – on top of the courses already implemented (Domestic Violence and Violence against Women, Ethics for judges, prosecutors and lawyers, Procedural safeguards for suspects and accused and victims’ rights, Data protection and privacy rights, Combatting trafficking in human beings), four more courses were introduced in the past year (Asylum/Migration e-Desk, Human Rights in Sport, Cybercrime and Electronic Evidence, Access to Justice for Women)

⁶ More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1447707/_event

⁷ More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1215090/_event