

Current Developments in the Legal Profession Slovak Republic

On 24 September 2012, the Slovak Bar Association organized the Meeting of the Bar Presidents from Central and Eastern Europe and CCBE delegates, hosting colleagues from Hungary, Austria, Czech Republic and Poland. The legal profession in Europe has been facing a number of attempts for a reform, either originating from the representatives of the bars, from national governments or even from supranational institutions. Diverse legal culture, history and growth of the internal market have influence on the progress of the legal profession. Bar representatives discussed a number of issues (mutual harmonization of deontology rules governing the practice of law in national bars, legal forms of the lawyers' cooperation, alternative business structures, lawyers employed by lawyers and by companies, state of play of e-justice initiatives, data protection regarding social media and intellectual property, implementation of the Morgenbesser case, Communication from the Commission on the implementation of the Services Directive, *Mor v. France*: Lawyer's freedom of expression in the media, minimum common procedural rights for suspects and defendants and victims).

Development of the legal profession in Slovakia in 2012 was strongly affected by the preparation of the Amendment to the Legal Profession Act. The Amendment entered into force on 1 January 2013 but there are some provisions which shall take effect on 1 January 2015. This Amendment is quite extensive, as it amends and modifies a number of issues and concepts affecting lawyers as well as trainees. It *inter alia* involves the following areas:

A. Requirements for the enrolment of trainee lawyers and qualified lawyers and for the traineeship period

University programmes are at present divided into two stages: Bachelor's degree programmes and Master's degree programmes. Under the Amendment, the Bar shall admit anyone as a trainee within two months from receiving his written application, provided that such a person has a Master's degree in law of a law school in the Slovak Republic, or holds a recognised university diploma whereby the Master's degree was awarded to him by a law school in a foreign country other than the Slovak Republic. As from 1 January 2015, the applicant must prove that he was awarded the degree in law not only at the Master's level, but also already at the Bachelor's level. As from 1 January 2015, when enrolling trainees who hold recognised university diplomas, the Bar may ask them to pass an aptitude test to prove their abilities to apply Slovak laws.

The extension of the traineeship period from three to five years presents a substantial change from the viewpoint of those who wish to become lawyers; there are also stricter criteria as to the contents of the traineeship (trainees must attend civil and criminal proceedings and report on their activities in time sheets; time sheets are then submitted as a part of the trainee's documentation for the Bar examination, and may be presented either as hard-copy or electronically). The aim of this provision is to enhance the improvement of the quality and professional knowledge of future lawyers.

As regards individual seminars organized by the Bar as a part of the traineeship period, the requirement of attendance thereat is now governed and regulated directly by the parliamentary Legal Profession Act, not only by an internal rule of the Bar (Resolution adopted by the General Assembly of Lawyers); the internal rule sets out specific terms and conditions as well as the scope of seminars organized by the Bar. Attendance at all seminars will be one of prerequisites for passing the Bar examination and for admission to the Bar.

In the past, the Bar Council could use its discretion to include the practice in other legal professions (e.g. practice of an in-house lawyer) in the trainee's practice. Nowadays, such

course of action is no longer allowed. The Bar Council shall automatically count the practice of a judge, court clerk at the Slovak Supreme Court, trainee judge, prosecutor, trainee prosecutor and notary as the trainee's practice, but no other practice. This change was motivated by the decrease in the level of knowledge of law faculty graduates. The Slovak Bar Association proposed this change in order to improve the quality of legal services. The primary ground for the proposed change is the satisfaction of clients with legal services provided by lawyers.

A from 1 January 2013 a lawyer may employ and supervise a trainee lawyer only if the lawyer himself has been a member of the Bar for at least three years. A lawyer performing the duties of a supervisor will be allowed to employ no more than three trainee lawyers. This provision takes into account challenges lawyers face in their every-day practice and difficult tasks connected with the provision of legal services, which may have significant consequences in dealings with clients, courts, prosecution authorities, other public bodies and organizations. Experience is required to guarantee a certain level of practical knowledge.

B. Practice of law

The Amendment cancelled dual provision of legal services as a self-practising lawyer and at the same time through a company formed for the purposes of the provision of legal services. The Amendment also governs and regulates the minimum limit of loss payment agreed in the insurance policy in the case of liability for loss or damage caused in connection with the provision of legal services, such limit being EUR 100 000.

As to advertisement, the Amendment introduces stricter and more detailed criteria for the lawyers' promotion of legal services provided by them. Advertisement was previously governed and regulated in the Rules of Professional Conduct (being an internal rule), nowadays presentation will only be allowed in a form of publishing factual and true information (comparative advertisement is strictly forbidden). The Amendment is based on the principle that a lawyer presents himself first of all by the quality of legal services he provides and he is obliged to preserve the esteem and dignity of the legal profession. The advertisement cannot contravene the Bar's regulations and its Rules of Professional Conduct, it must be factual and true and it must not be misleading, it shall not pose any risk to the dignity of the legal profession. If a lawyer presents himself in public, or if he provides information to the media, he must not praise his own person and actions, the activity of the association or company he is a member of or a partner in. The Amendment responds to the current situation and several cases of impermissible or inadequate advertisements that were contrary to ethical rules and principles of the legal profession. This was also motivated by a number of cases of advertisements that degraded the dignity of the legal profession.

The Amendment introduces two new reasons for the temporary suspension of practice as a result of a lawyer's failure to pay a fine imposed in disciplinary proceedings and failure to reimburse the Bar for the costs of disciplinary proceedings within three months after the decision made by a disciplinary panel became absolute and final.

The Amendment vests the Bar with the powers to identify barriers in the state of registration preventing or impeding Slovak lawyers to provide legal services in the state of registration for the purposes of deciding about applications of foreign lawyers to be admitted to the Slovak Bar Association; previously, this power was vested with the Ministry of Justice.

C. Disciplinary proceedings

A new body will be established – Appellate Disciplinary Committee. It will consist of three-member appellate panels. Previously appeals were decided by the Bar Council. These

changes will speed up disciplinary proceedings and will make them more effective, and they will eliminate inconsistent (even contradictory) decisions in similar cases.

D. Bar governing bodies

The term of office of governing bodies will be extended by one year, thus to a four-year's period, and members of governing bodies will be eligible for re-election limited to two consecutive terms only.

The Amendment introduces a new provision stating that decisions taken by the governing bodies issued in accordance with the law shall be enforceable titles which may be enforced by a bailiff /enforcement officer. It concerns especially decisions made in the course of disciplinary proceedings on the imposition of fines; the aim of the Amendment is to facilitate recovery of fines and costs of disciplinary proceedings.

Activities of the Slovak Bar Association were not focused only on the above-mentioned Amendment to the Legal Profession Act. The Slovak Bar actively communicates with its partners and promotes the rights of lawyers in different areas. As far as other initiatives are concerned, a list of professional practice areas was introduced on the Bar website and in the registry maintained by the Bar as an additional search criterion. It is not a specialisation in the true sense of the word (unlike e.g. the concept of “*fachanwalt*” in Germany) since neither law faculties in Slovakia, nor the Bar nor any other accredited institutions provide for specialised education in certain fields. The list serves the needs of clients who can find lawyers according to their preferred practice areas.

Preparation of the Filing Rules and Procedures is another positive contribution of the last year. Every lawyer is obliged to keep adequate record of the provision of legal services as stipulated by law. The Filing Rules and Procedures aim to serve as a tool for proper keeping of records related to the lawyer's agenda. However, results of the electronic survey showed that lawyers have not identified themselves with the duty to keep record of their files according to the new Filing Rules and Procedures. They argued that the Filing Rules and Procedures present an excessive byrocratisation of lawyers' work and inappropriate interference by the Bar. That is why the Slovak Bar Association adopted the Filing Rules and Procedures as a recommendation only so that non-compliance therewith does not constitute a reason for the commencement of disciplinary proceedings.