

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

**49th (online) European Conference of
Presidents of Bar Associations
and Law Societies in Vienna**



Governing bodies and statistics

The Slovak Bar Association Presidency elected in 2017 reaches the end of its mandate as the Bar is preparing for 2021 General Assembly. Given the lasting pandemic situation the Slovak Bar Presidency has been discussing various possibilities of holding the Assembly remotely, electronic voting including.

Currently the number of active registered lawyers is 5413 and there are 1999 trainee lawyers with well-balanced gender ratio. There are also about 229 registered lawyers with foreign status (EU lawyers, foreign lawyers from OECD countries and international practitioners).

Relevant government legislative proposals

Throughout the past year the Slovak Bar Association closely observed the national legislative process and submitted comments regarding the number of legislative proposals among which the following had an impact on the legislation in general or specifically on the legal profession. In this context the Bar members did their utmost to promote the rule of law as well as independence, freedom and dignity of the legal profession.

- **COVID-19 legislation**

On 23 March the Government crisis team accepted Slovak Bar Association proposal to freeze the legal time limits, including the time limits for appeal and retrial, from 12 March to 30 April 2020. Courts could have conducted hearing only when strictly necessary, that is in case of detention and guardianship of minors. Since then the measures have been constantly changing. The videoconferencing was not put in practice. With the third wave of pandemic in the beginning of 2021, again, it was decided to freeze the time limits.

From the legal profession point of view it was discussed whether lawyers should enjoy some exception or special status as far as the free movement and provision of services is concerned in order to preserve the right to access to a lawyer. At the beginning of the pandemic the status of lawyers as legal services providers was uncertain and raised many questions. At present lawyers enjoy exception from the obligatory closure of business premises and thus may provide services to clients in cases that do not allow for remote solutions.

The Bar issued a statement on the shared custody issues under the restriction of movement and assembly to help interpret the legal provision under new circumstances.

The Bar offered Public Health Office assistance with drafting regulations.

The Slovak Bar Association expressed its concern over the number of cases when the government bodies applied accelerated legislative procedure even on draft legislation that is not urgent.

The Bar conducted a survey among its members to better evaluate the impact of COVID-19 legislation, possibility to request state financial aid and the overall situation on law offices.

- **Establishment of Supreme Administrative Court**

In the policy statement of the new government in April 2020, the new Ministry of Justice announced the intention to create a Supreme Administrative Court with disciplinary competence over judges and notaries and „possibly other legal professions.” Subsequent amendments to the Constitution, new acts and legislative drafts aim at harmonising the disciplinary procedure at the new Supreme Administrative Court for judges, notaries and lawyers. Slovak Bar Association has so far enjoyed a complete independence in the area of disciplinary proceedings and we expressed our concern about this planned change that has not been discussed with the Slovak Bar Association prior to its publication. Apart from the disciplinary competence and independence struggle the establishment of Supreme Administrative Court is in general welcome by the professional public.

- **Reform of the judicial map**

In November 2020 the Ministry of Justice introduced a plan to radically reform the judicial map. The plan is motivated by the CEPEJ recommendations to decrease the number of courts but it's radical scope raised a wave of opposition from professional public. The objective is to reduce the number of district courts from 54 to 30, number of regional courts from 8 to 3 and several changes in specialised agenda, such as moving all inheritance matters to one court in Bratislava, etc. The Slovak Bar Association conducted a survey among its members to learn about their views and it also organised a public discussion with the Minister and other representatives of the Ministry of Justice.

COVID-19: Legal Aid Projects

- **“Legal Aid in Quarantine” Project**

In April 2020 the pandemic situation prevented the Bar from organising traditional Lawyers' Day which under regular circumstances involves provision of legal aid all around the country, lectures for students on rule of law and general awareness raising campaign on legal services. Instead the Bar organised in March 2020 a two-week legal aid project online that offered a possibility to discuss legal matters primarily but not exclusively related to quarantine. Every legal question received was answered. 300 lawyers provided legal aid in overall 1300 cases.

- **Legal Aid to Victims of Domestic Violence**

With the second wave of pandemic the Bar decided to focus on providing aid to the most vulnerable. In December 2020 the Bar initiated a legal aid campaign aimed at victims of domestic abuse. The Bar cooperates with Mental Health League and other partners in order to provide complete support. Each participating lawyer is appointed to one client. Lawyers are undergoing a training via Council of Europe online training platform HELP.

COVID-19: E-learning provided by the Bar

Due to the first lock down in March 2020 Slovak Bar Association changed the format of training into online webinars and lectures in order to fulfil its tasks in this area. Regular weekly webinars enjoyed much appreciation from the members and given the high interest and participation they will remain part of the training curricula.

Legal Certainty Index III

The Slovak Bar Association conducted 3rd volume of Legal Certainty Index, a survey undertaken among its members with the aim to analyse the level or impact of selected legal acts, drafts and court decisions on the legal certainty. The number of respondents increased

this year to 486. The data was analysed and the objective was to assess the level of legal certainty in the practice of law-making bodies and bodies that apply the law. The results were published in the form of report.

Communication

- **Disciplinary issues**

Slovak Bar Association submitted a proposal to amend the Act on the Legal Profession so as to partly allow provision of information about ongoing cases to provide for necessary transparency but at the same time to protect the confidentiality and professional secrecy. The debate about the publicity and possibility to inform more about the disciplinary proceedings has been on the table for several years now.

Slovak Bar Association is under pressure to inform the public and our members about the disciplinary proceedings against the lawyers in the cases with high media coverage. We are constantly communicating that Slovak Bar Association is not tasked to prosecute members for alleged criminal offences and that the disciplinary powers relate to deontological and profession oriented issues only.

We have opened the debate about the purpose and characteristics of the disciplinary competence. On the 26th June 2020 we streamed a webinar on the Disciplinary misconduct of lawyers with the Chair of the Disciplinary Commission and the Chair of the Supervision Committee and on 2nd July 2020 we held a Round Table discussion with the Minister of Justice, Parliament's Committee for Constitutional Affairs and an NGO that fights corruption.

- **Social Media**

In order to get closer to our members in the past year that prevented us from personal meetings, the Bar agreed to create a new channel of communication and set up a closed group for lawyers and another one for trainees on Facebook to keep them informed on a daily basis and to get their feedback. With 2150 followers on LinkedIn and 1350 members of the group on FB we are happy to say that the internal communication is more robust now.

International Relations

- International organisations associating lawyers

The Slovak Bar Association has throughout the year upheld the focus on involvement in the international organisations of lawyers – as a regular member of CCBE, IBA and AIJA, and with its active representation in ECBA.

Slovak Bar Association Vice-President Ondrej Laciak concluded two-year-long mandate and was re-appointed as CCBE Criminal Committee chair for the second time.

- Regional cooperation

In September 2020 the Slovak Bar Association hosted the annual meeting of Regional Bar Presidents that unites bar representatives from Germany, Czech Republic, Hungary, Austria, Poland, Slovakia, Croatia and Slovenia. Every year one of the member bars holds the event based on rotation principle. For the first time the event was held online.

- CoE Human Rights Education for Legal Professionals – HELP platform

In January 2020 Slovak Bar Association in cooperation with the Czech Bar Association launched a pilot Council of Europe HELP distance on-line course on procedural safeguards in criminal proceedings and victim's rights for 60 lawyers and trainee lawyers. After two months of training the participants received well deserved certificates.

In June 2020 the Bar launched another three-months-long HELP course, this time not only for lawyers but also for judges and prosecutors. The topic of the first inter-professional course was focused on measure to combat human trafficking and the feedback was very positive.

- JMLS Seminar on US law

Once again in cooperation with the Czech Bar Association, the Slovak Bar Association co-organised a week long seminar on US law for lawyers and trainee lawyer with 10 speakers from John Marshall Law School who provide lectures on annual basis for the past 20 years. This time, however, via online platform for the first time. The seminar took place in December 2020.

Arbitration Court of the Slovak Bar Association

SBA Arbitration Court reported increase in the number of applications in 2020. It has continued to take part in the professional debate on the future of the arbitration in Slovakia, as a partner in Annual Arbitration Conference, by organising training events and lectures.

Contribution of the Slovak Bar Association to the 2021 Rule of Law Report

SLOVAKIA

General remarks

The topic of the rule of law has formed a significant part of the discourse within the professional public and in the society in general over the period considered. Various deficiencies in the procedural aspect of rule of law principles were strongly communicated by various representatives of professional bodies as well as individuals.

Slovak Bar Association would like to focus on the following aspects: irregularities in legislative procedure, level of legal certainty, questionable application of criminal law institutes and misunderstanding of the role of lawyer.

Legislative procedure

European Commission 2020 Rule of Law Slovakia Report:

Commitment of the SR: „The Government appointed in March 2020 has indicated that it aims to improve the stability and predictability of the regulatory framework through actions such as improving of planning and of transparency in the legislative process“

Recommendation of the European Commission: “There is a need to improve the legislative process by strengthening the involvement of stakeholders”.

Despite the commitment of the government, the transparency in the legislative processes has not increased in 2020.

- Most of the working groups of experts from different institutions and professional bodies that had been established before by the previous government were not convened after March 2020 and consultations with stakeholders have paused.
- This was in contrast with the fact that many measures/reforms/amendments in the area of justice proposed were significant and radical in its scope (e. g. establishment of supreme administrative court with new competences, several constitutional changes related to judicial bodies, annulment of decision-making immunity of judges, judicial map reform, etc.).
- Moreover, several legislative procedures unrelated to the COVID-19 legislation were adopted in accelerated procedure in the context of emergency state (such as Legislative procedure related the Act on the Judicial Council).
- We have seen a number of changes in fundamental legal frameworks made through last-minute amendments via MP proposals and without any technical discussion (such as proposal to take away the competence to review constitutionality of constitutional acts from the Constitutional Court, proposal to disapply the principle of independence of prosecutors office).

These examples of legislative procedure are disproportionate in terms of the transparency of constitutional legislation and the principle of legal certainty in the broadest sense. Our intention is not to question the objective of the proposals that may have been legitimate but the certain lack of procedural aspects of rule of law that provide checks and balances. Additions to the text of the draft Constitutional Act in the advanced stage of the legislative process shows features of cabinet law-making. Involvement of stakeholders was initiated in the form of online consultations and presentation of legislative proposals only in early 2021 after a strong call from the professional public.

Reaction of the Slovak Bar Association:

- Statement taken in relation to the draft Constitutional Act that was is extremely controversial for both constitutional-political and constitutional-legal reasons in the part which was to

explicitly limit the power of the Constitutional Court of the Slovak Republic to review the compliance of constitutional laws with the Constitution. The amendment was taken without standard legislative procedure.

- Available at:
https://www.sak.sk/web/sk/cms/news/form/list/form/row/372965/_event)
- Statement on the amendment of the Constitution of the Slovak Republic submitted in the National Council of the Slovak Republic proposing to change the independence of the position of the prosecutor's office. The amendment was proposed without standard legislative procedure.
 - Available at:
<https://www.sak.sk/web/sk/cms/link/news/372755>
- Slovak Bar Association organised a public discussion with Minister of Justice on the topic of Judicial Map Reform for all lawyers online
 - Available at:
https://www.sak.sk/web/sk/cms/news/form/list/form/row/392392/_event
- Slovak Bar Association request to motivate the decision to apply shortened legislative procedure - Amendment to the Act on the Critical Infrastructure:
 - Available at:
https://www.sak.sk/web/sk/cms/news/form/link/display/474972/_event

Legal certainty

COVID-19 crisis undoubtedly places major demands on all institutions involved in decision-making. However, the measures should be taken in such a way so that a certain level of legal certainty is met. While it was understandable that taking decision and preparing related legislation and regulation might have been chaotic in the beginning due to lack of experience and practice, later on it was expected that it would be improved. Unfortunately, even at the beginning of 2021 the regulations were repeatedly adopted at the very moment, in contrast with what was declared by the members of government and natural and legal persons had often a few hours to study, interpret and prepare for implementation of regulation. The principle of predictability was not fulfilled.

We would also like to point out that it was not always clear how to proceed with the visits of clients in detention or prison. The online consultations were not put in place and access to prison was regularly conditioned on negative test or counsels were requested to limit their visits.

Application of criminal law institutes

In 2020 we witnessed active approach to criminal prosecution of alleged perpetrators suspected of corruption and abuse of public office. Although the interest in investigation of antisocial activities is legitimate, the practice of law enforcement authorities has become questionable in certain aspects:

- The length of detention and the application of collusive detention is perceived as excessive and the principle of proportionality is threatened. It is no exception that collusive detention lasts longer than 12 months in Slovakia. The issues has been put under spotlight in the last year as a number of public officials/members of judiciary were put in detention, also due to the mental health state of several detainees. Collusive detention is justified if there is a suspicion that the person would affect witnesses and their testimony. In Slovakia it is usual that collusive detention lasts until all witnesses give testimony at the trial.
- There are leaks from the criminal files.
- The media are informed about particular information before the addresses receive it.
- Arrests are performed under the media spotlight and with unnecessary force. Authorities apply draconian approach that is not proportionate to the situation.

Reaction of the Slovak Bar Association:

- Slovak Bar Association proposed the Ministry of Justice concrete changes to the Criminal Code to ensure respect of fundamental rights:
 - Available at:
https://www.sak.sk/web/sk/cms/news/form/link/display/446772/_event

Lack of understanding of the role of lawyers

The right to defence and the right to a lawyer of suspected and accused persons is still generally misunderstood. It should be noted that these fundamental rights are undermined significantly when public officials condemn lawyers for undertaking defence. Moreover, there are cases when it was understood that a lawyer was detained due to the fact that he provided legal services or defence counsel to persons suspected of committing crime. This is a long-lasting issue as the Slovak Bar Association identified 17 cases since 2007 when defence counsel was co-accused and later released based on the conclusion that the lawyer was not part of the criminal activity while losing the possibility to continue with the defence at the same time. This may be seen as a pattern used to prevent the lawyer from provision of legal services.

Examples:

- During hearing of candidates for prosecutor general, the member of the parliament told the candidate that he “did not like lawyers who undertake defence on behalf of bad people”.
 - A lawyer has been kept in collusive detention for 14 months and the accusation is based on the fact that he provided defence to members of organised crime group. The situation led to an initiative of individual lawyers - “Za právny štát” (For the Rule of Law) - who point out that the detention of the colleague is too prolonged and not well motivated
 - <https://zapravnystat.sk/wp-content/uploads/2020/12/TS-IAPS%CC%8C-17.12.2020.pdf>
- While de lege lata there are guarantees to confidentiality during searches of offices, in practice this is often breached and there are also cases of search without written warrant.
- Media headlines associate lawyers with their clients.

Reaction of the Slovak Bar Association:

- Amicus Curiae in case of a detained lawyer. Slovak Bar Association called for respect of the principle that a lawyer cannot be prosecuted for the provision of legal services.
 - Available at:
https://www.sak.sk/web/sk/cms/news/form/list/form/row/370420/_event
- Press release: “It may happen to anyone, whether legitimately or on the basis of an error or false accusation, that they will have to ask for the help of a lawyer or defence counsel. That is why we regret that their work is being disparaged - with the statements of some politicians, but also, for example, with media headlines and articles, where they are associated with former clients so that it creates the impression that they have participated in their activities.”
 - Available at:
<https://www.linkedin.com/feed/update/urn:li:activity:6762760547323670528>
 - <https://www.dalito.sk/ak-advokat-zastupuje-klienta-neznamena-to-ze-schvaluje-jeho-trestnu-cinnost/>

Other Rule of Law Initiatives

Developments described above led to strong response from the professional public in the end of 2020.

1. “Za právny štát” (For the Rule of Law) – initiative of lawyers who point out that under the current circumstances judges are afraid to take decisions and the right to a defence counsel is undermined (97 advocates, 19 other legal professionals)
 - General website: <https://zapravnystat.sk/>
 - <https://zapravnystat.sk/wp-content/uploads/2020/12/TS-IAPS%CC%8C-17.12.2020.pdf>
 - <https://www.facebook.com/zapravnystat/>
2. “Rule of Law” Initiative (signed by 123 judges, 233 advocates, 74 other legal professionals)
 - This is an initiative with a wider scope of reservation that cover the lack of transparency in legislative proposals, absence of discussion with professional public, disproportionate limitations of fundamental rights, threats to independence of judiciary and lawyers, weakened competence of Constitutional Court, abuse of the detention, disrespect of presumption of innocence, the use of the testimony of collaborative witness, cooperation of criminal authorities with media, etc.
 - Available at: <https://pravnystat.eu/en/>
3. “Call for preservation of democracy and rule of law” - 14 judges signed a declaration based on two issues – delegation of decision-making powers to public health office and practice of arresting persons with media presence
 - <https://dennikn.sk/minuta/2174450/>
 - <https://www.eurorespekt.sk/vyzva-sudcov-na-zachovanie-demokracie-a-pravneho-statu/>