

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

**52nd European Conference of
Presidents of Bar Associations
and Law Societies in Vienna
9th February 2024**



- **Governing bodies and statistics**

The Slovak Bar Association Presidency elected in 2021 continues its mandate under the leadership of President Martin Puchalla.

Currently the number of active registered lawyers is 6601 (increase by 88) and there are 1686 trainee lawyers (decrease by 111) with well-balanced gender ratio (55% women). There are also about 248 registered lawyers with foreign status (EU lawyers, foreign lawyers from OECD countries and international practitioners from WTO countries) (decrease by 5).

- **Independence of the legal profession**

Slovak Bar Association organised a round table with the representatives of Ministry of Justice, constitutional and supreme judicial institutions, prosecution office and ombudsman office on 27th April 2023 on the occasion of the Day of the Legal Profession.

In this regard, those present agreed that: *"Free and independent legal profession is one of the necessary prerequisites for the effective protection of fundamental rights and freedoms, as well as the functioning of a democratic and legal state as such. In order to protect these rights and freedoms, it is necessary to protect the basic pillars of the rule of law, such as, in addition to the independence of the judiciary, a free legal profession independent of state power."*

The Bar regularly defends its members if they are the target of public humiliation or other attacks for doing their job. Unfortunately, such unjustified attacks on lawyers often came from representatives of law enforcement agencies.

Slovak Bar Association considers it of crucial importance that all legal professionals are free of attacks, harassment and threats. The Bar condemned the attack on the Special Prosecutor (see the press release below of 4th February 2023) and a judge (see the press release below and 27th October 2023). "An attack on any judge is always an attack on justice, and thus also an attack on the system protecting the rights of all of us. Judges, as well as representatives of all other judicial professions, must feel safe in the performance of their profession. Otherwise, it is not possible to effectively protect basic rights and freedoms," said SBA President Martin Puchalla. Together with judges, the Slovak Bar Association therefore called on the public and politicians to always keep their public statements towards judges and the judiciary within the bounds of objectivity and decency, and never have the character of personal attacks.

In cooperation with CCBE, the Slovak Bar Association undertook a survey in 2023 among its members on the attacks they face due to provision of professional services.

- We received 42 responses out of which 30 persons experienced verbal aggression, 18 persons threatening behaviour, 22 persons harassment and 10 persons physical attacks.
- 4 respondents replied they knew more than two lawyers who ceased providing legal services due to attacks and 4 respondents replied they knew at least 1 lawyer who quitted legal profession.
- 26 respondents claim that the situation got worse in last five years.

- **Duty of confidentiality**

The Slovak Bar Association welcomed the adoption of the Criminal Procedure Code amendment related to the law office search.¹ We believe this could help prevent violations of the fundamental rights of

¹ Section 106a

(1) When conducting a house search or search of other premises in which the lawyer practices legal profession, as long as there may be documents that contain facts to which the lawyer's obligation of confidentiality applies, the law enforcement authority performing the act is obliged to request the cooperation of the Slovak Bar Association (hereinafter referred to as the "Bar") and pre-trial judge who is competent/entitled to decide on the

clients. The Slovak Bar Association fully respects the power of authorities to investigate criminal activity among lawyers. 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.

Confidentiality of communication between lawyer and client is a basic prerequisite for the proper provision of legal services. While there were statutory guarantees for protection of confidentiality during searches of offices, in practice this was often breached by police and prosecutors and there are also cases of search without a written warrant. We have repeatedly recorded cases when, as part of the investigation of a specific act, during searches of a law office, practically the entire computing equipment (hard drive) was seized, on which the data of potentially hundreds of clients could be stored. In 2022 we have observed **this practice to increase in quantity as well as intensity**. The possible scope of the violation of the law in these cases was alarming.

- **Criminal Codes reform process**

As regards the revision of Criminal Code and Criminal Procedure Code, the process was marked with several deficiencies. At first, there was lack of professional debate and transparency of the drafting process, later this was remedied by creation of working groups under the auspices of the minister of justice. However, the draft approved by the government was ignored by the Parliament that omitted to vote on it.

The proposal was reintroduced by a new government in December 2023 in an abbreviated legislative proceeding. As for the proposal itself, it is a fairly extensive legislative material that will require careful study. In this context, on the one hand, we appreciated that the Ministry of Justice of the Slovak Republic, like in the past and now, also invited representatives of the Slovak Bar Association to consultations on some parts of the amendment. On the other hand, however, we note that we do not consider the proposal to negotiate such fundamental changes to the key code of criminal law in abbreviated legislative proceedings to be the best. We understand that most of the topics have already been the subject of expert discussions in various commissions and at the Ministry of Justice of the Slovak Republic, including the recent amendment proposal presented at the end of the last election period. Despite this, the Bar has long been promoting the opinion that fundamental changes in the codes should always be dealt with in a standard procedure.

- **Breaches of defence rights**

In 2023, after two years, the Slovak Bar Association (SBA) conducted another survey among lawyers regarding the legality of the procedures of law enforcement authorities (LEA). The survey confirmed that illegal coercion is often part of the practice of law enforcement authorities, especially in pre-trial and preliminary proceedings. According to 64 percent of respondents, illegal coercion is part of the practice of LEA. Compared to the internal survey from 2021, when 72 percent of survey participants confirmed such a practice, this is only a slight decrease in the perception of this undesirable phenomenon. The SBA conducted this survey in an attempt to collect the practical experience of defence lawyers in the context of the continuing concern of the professional public about the illegal procedures of the LEA. SBA conducted the first survey in 2021. 110 lawyers participated in the second survey this year, i.e. almost 40 more people than in the pilot survey. Defence lawyers most often encounter practices of illegal coercion at the stage of pre-trial and

matter. The law enforcement authority performing the act is entitled to familiarize itself with the contents of the documents specified in the order exclusively in the presence of the Bar's representative. The law enforcement authority performing the act is not authorized, without the consent of the representative of the Bar or the pre-trial judge, to get acquainted with and secure documents that contain facts to which the lawyer's obligation of confidentiality applies. The representative of the Bar is appointed by the president of the Bar from among its employees or lawyers. If, despite proper and timely notification of the Bar, the representative of the Bar does not appear, the house search or inspection of other premises can be carried out even without the presence of the Bar representative. The opinion of the representative of the Bar and the judge for preliminary proceedings shall be stated in the minutes according to § 105 par. 5.

(2) If the representative of the Bar refuses to grant consent according to paragraph 1, the pre-trial judge will decide on the spot by means of a measure and, in the event of duly justified need, by means of a measure with a brief statement of reasons without unnecessary delay after the end of the inspection. The measure shall be entered in the minutes according to § 105 par. 5.

(3) When deciding on the substitution of consent according to paragraph 1, the prosecutor, lawyer and representative of the Bar are present. The documents must be secured in the presence of the authority performing the act, the lawyer and the representative of the Bar so that no one can become familiar with their contents or destroy or damage them; the relevant documents must be handed over to the court immediately afterwards. The court will ensure that documents are protected from unauthorized disclosure of their contents. The details and procedure for securing and seizing the document will be established by a generally binding legal regulation issued by the Ministry of Justice.

(4) No legal remedy is admissible against the decision to substitute the consent. In the case of substitution of consent, the court will deliver the documents to the law enforcement authority that conducted the search. If the court decides not to substitute the consent, the court will deliver the seized document to the lawyer.

(5) The document according to paragraphs 1 to 4 shall be understood to also mean another information carrier, computer data, including operational data that have been stored through a computer system. If necessary, the law enforcement authority or the pre-trial judge can hire a professional consultant, a specialized professional office or an expert institute.

(6) A lawyer whose house or other premises are searched is entitled to make an audio or video-audio recording of the search, which shall be recorded in the minutes. The representative of the Bar, as well as the authority performing the search, shall enjoy the same right.

preliminary proceedings (more than 98% of respondents marked these answers). Compared to 2021, there was almost no improvement in this area. On the contrary, while in 2021 more than half of the respondents confirmed the existence of illegal coercion even after the first-instance verdict, in the new survey more than 65% of the respondents answered negatively. The survey further examined the experiences of lawyers with selected specific forms of illegal coercion. According to the survey, lawyers in practice less often encounter the practice, when the non-submission of a motion for detention is conditioned or stimulated by the confession of the accused (48% said that their client had such an experience, which is 15% less than in 2021). More than half of the respondents (as in 2021) said that the LEA promised their client certain benefits if he/she provided a statement that would be incriminating evidence against a co-accused person. 60% of respondents confirmed that they had encountered a situation when the court had initiated an informal negotiation regarding the form and amount of the punishment, on the condition of admitting guilt in its entirety, before the main hearing. The lawyers interviewed were also given the opportunity to describe what other illegal practices they encountered during their practice. The answers indicate that sometimes the procedures of LEA directly violate the right to defence guaranteed by the Constitution of the Slovak Republic. According to the answers, LEA bypasses the lawyer and negotiates directly with the client without the lawyer's knowledge. The respondents gave several answers, according to which LEA directly encouraged the accused to cancel the power of representative to their defence lawyer, sometimes even for the promise of facilitating certain benefits. According to responding lawyers, evidence obtained in this way is recognized and, in violation of the law, it is taken into account in the decision-making process. The Slovak Bar Association also reiterates in the context of this survey that any criminal activity can only be detected by legal means. Otherwise, there is a risk that not only specific proceedings will be thwarted, but ultimately also a deepening of people's mistrust of the rule of law.

- **The level of legal aid fees**

In January 2023 the Slovak Bar Association submitted to the Ministry of Justice a proposal to amend the Regulation no. 655/2004 Coll. on Remuneration and Compensation of Lawyers for the Provision of Legal Services ("Lawyers` Tariff"). The aim of the proposed amendment was (among other issues) to achieve that compensations for ex offa defence and remuneration within legal aid system more closely correspond to the real costs and to improve recoverability of compensations awarded to successful parties in the court proceedings. We expected to hold a meeting with the Ministry to discuss the comments provided in official legislative procedure. However, at the agreed meeting, we were informed that the amendment to the Regulation has already been signed and will be published in the Collection of Laws. As a result, despite many clear positives amendments, the regulation will not adequately reflect the development of inflation and the real increase in the costs of legal representation. The parties who successfully claim their rights will continue to not have the real costs of legal representation sufficiently covered. Continuation of negotiations on important aspects of the rights protection system was thus not possible. Let it be reminded that the issue of the lawyer's tariff determined in the Regulation is not a question of lawyers' benefits, but it is in the interest of the citizens themselves, whose rights were violated and had to claim them. The Slovak Bar Association will therefore continue, regardless of political developments, to strive for the necessary improvement in this area.

- **Court map reform**

The Slovak courts are undergoing changes in the context of the recent Court map reform. In connection with the implementation of the court map, SBA representatives agreed with the Minister of Justice in June 2023 to conduct a joint survey of expert public opinion on the first experiences with the functioning of the court map. The goal of the survey, which the Ministry of Justice of the Slovak Republic is conducting among judges and SBA should conduct among its members, will be to identify areas for practical improvement of the functioning of the judicial system. Changes at the ministry due to parliamentary elections postponed the survey.

- **Training of lawyers**

Slovak Bar Association provides training to its members on voluntary (qualified lawyers) and mandatory basis (trainee lawyers). Lawyers can undertake additional training choosing from among private providers depending on their area of expertise.

In 2023 the Bar organised more than 100 internal training events for circa 4700 participants.

Slovak Bar Association organises regular hybrid training events for lawyers on Wednesdays, two annual two-day seminars, ad hoc seminars and several seminars initiated by regional representatives.

Trainee lawyers must undertake four mandatory two-day seminars a year – theory and practice, plus mandatory seminar in ethics. Moreover, the mandatory training of trainees has undergone a reform in 2018, intention of which was to train not only the theory of law, but equally the legal practice. The new training system was put to test by COVID restrictions but in the past year it was possible to fully apply it again. The previous training system was oriented towards an informative way of describing the current legal situation. The new concept of training expands this basis with practical seminars, where trainees in small groups can practice their ability to solve a legal problem on the basis of a case study under the supervision of a lecturer and by preparing proposals for submissions. Creativity and active approach are expected from the lecturer and trainees so that the practical exercise fulfils its purpose - to point out frequent problems in the application of legal regulations and to teach trainees to express themselves, argue their problems objectively and find solutions, manage the situation within the limits of lawyer ethics.

Slovak Bar Association has been involved in several training projects with European dimension co-organised by its partners:

- Cooperation with Council of Europe within HELP (Human Rights Education for Legal Practitioners) Programme: on top of the already implemented courses (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, Human Rights in Sport, Asylum and Migration e-desk, Access to Justice for Women) implementation of two new courses was introduced, Domestic Violence and Violence against Women, Cybersecurity and Electronic Evidence. Up to this day the Slovak Bar implemented 10 different HELP course and trained 426 persons.
- Cooperation with Academy of European Law (ERA) in organising and implementing project Young European Lawyers Academy (YELA) - EU law and networking-oriented contest and intensive training in EU law coordinated by ERA and focusing on trainee lawyers. The Bar hosted one of the YLC semi-finals in Bratislava in June 2022 and nominates participants every year.
- Cooperation with Academy of European Law (ERA) in organising and implementing projects Young European Lawyers Contest (EU law and networking-oriented contest) and Young European Lawyers Academy (intensive training in EU law coordinated by ERA and focusing on trainee lawyers). The Bar hosted one of the YLC semi-finals in Bratislava in June 2022 and nominates participants every year.
- Cooperation with European Lawyers Foundation (ELF) in implementing project on internships of young lawyers - LAWYEREX II - project on a short term exchange of young lawyers in law offices within the EU countries.
- As ERA partner in the EU Litigation project, the Slovak Bar Association promoted and made available to its members ERA EU Litigation Project study materials on its website and via social media.
- In cooperation with CCBE the Slovak Bar Association participated in the project BREULAW that enabled the Bar to send its representative to study visit in EU institutions.

Slovak Bar Association continued to organise or co-organise training to Ukrainian nationals in legal matters:

- Open seminar in employment and labour law organised in April 2023 at the premises of the Slovak Bar Association
- Series of webinars in cooperation with Human Rights League on family law and related legal matters
- On June 8, 2023, a seminar organized in cooperation with the HELP Secretariat on the current challenges associated with the implementation of the directive on temporary protection in EU countries took place on the grounds of the SAK. The co-organizers of the event were UNHCR and the European Commission. International organizations (UNHCR, Council of Europe, IOM Slovakia), European institutions [European Commission, EU Asylum Agency (EUAA), non-governmental organizations in Slovakia (League for Human Rights, TENENET, EQUITA o.z.)], bar associations, as well as Ukrainian lawyers living in Slovakia and other EU countries. Numerous participants joined online. The content of the seminar was the identification of best practices and shortcomings in the area of access to information, legal assistance and rights arising from the institution of temporary protection in the sense of the EU directive.