

## Submission of the Slovak Bar Association to 2023 Rule of Law Report

Slovak Bar Association **welcomes the opportunity to take part** in the public consultation related to the preparation of the fourth Rule of Law Report.

From the perspective of the **Bar Association as a professional organisation representing interests of the legal profession and citizen's right to access to a lawyer**, the previous year was marked by several developments that raised the rule of law concerns:

- First, repeated flagrant **breaches of the procedure that governs searches of law offices** and conflicts with the duty of confidentiality as stipulated by law and interpreted by Constitutional Court rulings.
- Secondly, the proposal to revise the Criminal Procedure Code with respect to the pre-trial proceedings which significantly **limits the defence rights of suspects and the accused**.
- Thirdly, the legislative proposal introduced without standard legislative procedure that aimed at **legalisation of illicit trading in legal services**.

### 1. JUSTICE SYSTEM

- **Independence of the legal profession**

Practicing the legal profession freely and independently is the most valuable asset legal profession has and it 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 the independence of the legal profession 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.

At the conference on the effectiveness and legality of criminal proceedings, jointly organized in June 2022 by the Comenius University Law Faculty and the Slovak Bar Association, the representatives of the Supreme Court, General Prosecutor's Office, Slovak Bar Association and the law faculties 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 defence 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.**"*<sup>1</sup>

- **Duty of confidentiality**

Confidentiality of communication between lawyer and client is a basic prerequisite for the proper provision of legal services. While there are statutory guarantees for protection of confidentiality during searches of offices, in practice this is often breached by police and prosecutors and there are also cases of search without a written warrant. In 2022 we have observed **this practice to increase in quantity as well as intensity**.

SBA was particularly sensitive to **increasing 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.

There were cases when 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 have no connection with the investigated criminal matter**. This happened despite repeated warnings of the

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<sup>1</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1493306/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1493306/_event)

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 IT expert present 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 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.

Relevant press releases:

- [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1398989/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1398989/_event)
- [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1435998/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1435998/_event)
- [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1456381/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1456381/_event)

## 2. LEGISLATIVE PROCESS

- **Transparency**

**Shortcomings:** As regards the preparation of legal drafts, various stakeholders agreed that there was a tendency to avoid discussion with stakeholders if there was a significant change proposed by the Ministry of Justice that would most likely lead to opposing arguments. Slovak Bar Association expressed its concerns about the level of stakeholders' involvement in the legislative process in the 2021 public consultation. This was to some extent relevant for 2022 too.

Slovak Bar Association was invited to join the working group on the revision of the Criminal Code, however, subsequently no invitation to a meeting arrived to any member and we only learned about its content from the official legislative draft.<sup>2</sup> Representatives of highest judicial institutions and prosecution office agreed with the Slovak Bar that there was a lack of expert discussions in this respect.

Similarly, the process of preparation of Judicial Court map remained to be opposed by professional stakeholders<sup>3</sup> as the third draft of the court map was presented to the National Assembly of the Slovak Republic without a proper legislative process and the opportunity to express, and even without any discussion about it. We appreciated that the Prime Minister responded to our call (joint with the Supreme Court, Supreme Administrative Court and General Prosecutors Office) and created an opportunity for a joint discussion on the draft court map. However, we believe that such discussions should have occurred continuously in the process of creating the judicial map, not at the stage when the judicial map was submitted to the National Council and possible comments is only possible through parliamentary proposals.

**Positive feedback:** We wish to add that there was a number of standard legislative processes with transparent discussion, such as the reform of the companies' law or land-use planning and construction.

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.

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<sup>2</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1087476/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1087476/_event)

<sup>3</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1192986/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1192986/_event) and [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1244518/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1244518/_event)

**Good practice:** Slovak Bar Association initiated a creation of Criminal Law Expert Platform where representatives of Supreme Court, General Prosecutor and Special Prosecutor Office participated to discuss the proposed amendments to better understand the position of each of the justice system components.<sup>4</sup> There were six meetings in the course of 2022. The last meeting took place at the premises of the Ministry of Justice upon invitation of the newly appointed Minister.<sup>5</sup>

- **Restrictions on defence rights**

Proposed reform of the Criminal Procedure Code and its **redefinition of pre-trial procedure was considered to be worrying from the perspective of defence rights.**<sup>6</sup> We would like to support changes aimed at improving the functioning of the preliminary proceedings, but we are very sensitive to efforts to **strengthen the position of the state's power structures at the expense of citizens' rights and defence**, as guaranteed by the Constitution of the Slovak Republic, as well as international obligations to which the Slovak Republic is bound. Considering the fact that our country already has a lot of experience with the abuse of criminal law, it is necessary to approach the weakening of the rights of citizens at the expense of the state all the more strictly. Legislative comments in this respect were uploaded in the SLOV-LEX (electronic tool for legislative comments).

### **3. RULE OF LAW CULTURE (awareness raising)**

**Slovak Bar Association considers expert dialogue to be crucially important.** We perceive the lack of mutual dialogue of justice sector stakeholders and representatives. On September 23, 2022, the Slovak Bar Association invited the highest representatives of judicial institutions in Slovakia to a round table for the first time. Several other meetings followed in 2023<sup>7</sup> as well as creation of criminal law sub-platform.

It is important to raise awareness on the rule of law principles and concepts in the Slovak society also to avoid undue vilifying of lawyers. Any gap in communication between the media and the profession can contribute to the erosion of the perception of lawyers' role in society, through portrayals of lawyers in ways that could undermine the credibility and the overall image of the profession. This is also a case of other professions in justice sector. The Bar Association invested **a significant amount of efforts in answering questions in media** regarding the disciplinary procedure, criminal investigation of lawyers, difference between the role of the law enforcement agents and Bar Association bodies.

We also supported the **international Rule of Law Declaration** together with other representatives of the legal profession of the Member States of the European Union and of the Council of Europe at the meeting in Vienna on 11 June 2022 on the occasion of the French Presidency of the Council of the European Union.<sup>8</sup>

### **4. QUALITY OF JUSTICE:**

- **Quality of legal services**

A 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 should be sufficient to have a university degree in the field of law and it is not necessary to complete further education and practice or bear responsibility for their actions. Various persons who provide legal services illicitly harm ordinary people with their activities. Unlike lawyers,

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<sup>4</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1291957/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1291957/_event)

<sup>5</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1493306/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1493306/_event)

<sup>6</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1197734/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1197734/_event)

<sup>7</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1183509/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1183509/_event)

<sup>8</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1362444/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1362444/_event)

they do not bear any responsibility for their advice.<sup>9</sup> By adoption of the proposal, the parliament would not only weaken the quality of legal services and protection of citizens as consumer of legal services but it would legalise 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.

- **Training of lawyers**

The Slovak Bar Association provides training to its members on voluntary (qualified lawyers) and mandatory basis (trainee lawyers) – online, hybrid as well as in-person format. In 2022 the Bar organised more than 115 training events for circa 5450 participants. Lawyers undertake further training provided by private companies depending on their area of expertise.

In 2022, the Bar continued to organise regular “Training Wednesdays” in online and hybrid format on diverse topics from all areas of law. This project originated in the era of COVID-19 pandemic and has become part of regular training schedule.

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.

The Bar stresses the importance of deontology-oriented lectures, especially for young (trainee) lawyers: 299 trainee lawyers were trained in the application of ethical principles and HELP course Ethics for lawyers, judges and prosecutors was translated and made available to all members of the Bar Association.

Slovak Bar promotes training events with European/EU dimension with cross-border elements organised by its partners. Slovak Bar Association has been involved in several training projects with European dimension:

- **Cooperation with Council of Europe – HELP / HELP in the EU / HELP in the EU II/ HELP in the EU III (Human Rights Education for Legal Practitioners) Programme:** on top of the already implemented courses (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). Three new courses were introduced : Human rights in sport, Asylum and Migration e-desk, Access to Justice for Women
- **Cooperation with Academy of European Law (ERA)** in organising as well in promoting 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 trainee lawyers. The Bar hosted one of the YLC semi-finals in Bratislava in June 2022.
- **Cooperation with European Lawyers Foundation (ELF)** in implementing project on exchange of young lawyers within the EU (LAWYEREX).
- **Cooperation with CCBE** on disseminating information on webinars on Whistleblowing, Sanctions against Russia, Surveillance and the impact of modern spyware tools on fundamental rights and on Ukraine and ICC: the role of European lawyers.

## 5. 2022 RECOMMENDATIONS:

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<sup>9</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1154583/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1154583/_event) and [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1155933/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1155933/_event) and [https://www.sak.sk/web/sk/cms/news/form/link/display/1183509/\\_event](https://www.sak.sk/web/sk/cms/news/form/link/display/1183509/_event)

In respect of the Rule of Law Report 2022 recommendations adopted by the European Commission, the Slovak Bar Association expressed its reservations as follows:

The Rule of Law Report 2022 drew attention to the power of the General Prosecutor to annul any decisions of a subordinated prosecutors in individual cases (Sec. 363 of the Criminal Code). The European Commission recommends *“improving the coordination among the different law enforcement entities and ensuring the objectivity of prosecutorial decisions, including by continuing to advance the legislative amendments to restrict the power of the Prosecutor-General to annul prosecutorial decisions with a view to promoting a robust track record of high-level corruption cases”*.

In compliance with its long-term position, the SBA points out that in a rule of law state, the basic characteristic of which is an effective system of checks and balances, the abolition of any instrument that has this purpose should be preceded by a scrupulous professional evaluation. We are concerned that the Sec. 363 of the Criminal Procedural Code is approached more on the basis of media attention caused by some exposed cases where the General Prosecutor found a number of illegal procedural failures of the Special Prosecutor Office and National Criminal Agency. In the Slovak Republic it is the General Prosecutor who is responsible for the legality of the pre-trial stage, not the judge. The political voices on adopting a legislative change with the aim of taking away the General Prosecutor competence to review the legality is not accompanied by the necessary professional discussion and does not offer solution to tackle the cases of such serious illegal steps taken by the National Criminal Agency.<sup>10</sup>

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<sup>10</sup> More information available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1444381/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1444381/_event)

## ANNEX:

### **Press-releases in relation to breaches of confidentiality:**

#### **Law enforcement authorities have seriously threatened the right to confidential communication between clients and lawyers<sup>11</sup>**

Source: [www.sak.sk](http://www.sak.sk), August 17, 2022

The Slovak Bar Association in principle objects to today's and yesterday's police search of the premises of the law office in Bratislava, during which there could have been an extremely serious threat to the confidentiality of communication between clients and lawyers. According to information provided by the representative of the Bar, who was present at the search as a non-participant, the computer equipment of the law office was illegally confiscated. The electronic data was taken without adequately protecting the communication of a potentially large number of clients with lawyers. This issue in its scope could be an extremely serious violation of the law, which has no place in the rule of law.

"The information we have about the publicized inspection is extremely disturbing. According to our information, the investigators took equipment with the data of clients who, had nothing to do with the criminal proceedings for which the search was authorized. This happened despite the repeated warnings of our representative present at the inspection that such a procedure is in direct contradiction to the Criminal Code and the jurisprudence of the Constitutional Court of the Slovak Republic. The possible scope of the violation of the law in this case is, from our point of view, alarming," said the Bar President Viliam Karas.

A serious violation of the law is also indicated by the statement of the IT expert present, who confirmed in the minutes that the searched data could be selected directly on the spot in presence of a Bar representative. The minutes contain his clear opinion on the technical feasibility of such a safe and correct procedure. It was nevertheless rejected by the investigator. The Slovak Bar Association is not interested in entering a specific criminal case, which is always the task of elected or appointed defence lawyers. "In this case, however, the illegal procedure may have an impact on many clients who believed that protection of communication between the lawyer and the client is part of their right to defence. The Bar will therefore consider all available steps either on domestic or international level that could lead to the protection of the fundamental rights of citizens to legal aid," added the Bar President.

#### **Bar's opinion on another case of suspected interference with the confidentiality of communication between a lawyer and a client<sup>12</sup>**

Source: [www.sak.sk](http://www.sak.sk), September 30, 2022

The Slovak Bar Association is informed about the case of the leakage of e-mails, the content of which could allegedly be confidential communication between a lawyer and a client in one of the monitored criminal cases. We publish our opinion on this matter on September 28, 2022, which was also communicated to the media:

"Confidentiality of communication between lawyer and client is a basic prerequisite for the proper practice of legal profession. The Slovak Bar Association therefore strongly condemns any interference with confidential communication between a lawyer and a client, and its dissemination, which has no basis in law."

#### **Law enforcement authorities once again threatened the right to confidential communication between clients and lawyers<sup>13</sup>**

Source: [www.sak.sk](http://www.sak.sk), October 14, 2022

The Slovak Bar Association (SBA) recorded another case of suspicion of a serious threat to clients' rights to confidential communication with a lawyer. It happened during a police search of the premises of a law office in Bratislava II district. According to our information, during the search, the police seized

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<sup>11</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1398989/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1398989/_event)

<sup>12</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1435998/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1435998/_event)

<sup>13</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1456381/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1456381/_event)



electronics and other media containing the data of a number of clients who have nothing to do with the investigated criminal matter. A similar threat to rights occurred only recently during a search of another office in Bratislava. At the same time, we witnessed the illegal dissemination of alleged e-mails with communication between a client and a lawyer in another criminal matter. "These are worrying trends that indicate a threat to the fundamental right of people to communicate in confidence with lawyers. Such a practice needs to be stopped," Bar President Martin Puchalla responded.

"The Slovak Bar Association fully respects the powers of authorities to investigate criminal activity including investigation 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," added M. Puchalla.

A Bar representative was invited as a non-participant to the search of the law office in question. However, it follows from the information he provided to the Bar that the further steps of the National Criminal Agency (NCA) were in direct contradiction with the constitutional requirements. According to his testimony, despite his explicit warnings, NCA seized media and electronics without any selection on the spot - this means that, most likely, data from ordinary clients who have nothing to do with the investigated matter were also seized. In addition, contrary to the search warrant there was not even an IT expert present who could supervise the proper performance of the search. In connection with repeated threats to the right to confidentiality of communication with lawyers and police procedures, we are convinced that this is a field that needs to be clearly resolved by legal regulation. The jurisprudence of the Constitutional Court of the Slovak Republic is clearly not respected by the law enforcement authorities.

#### **SAK objects to the continuation of unlawful actions in case of last week's search of the law firm**

Source: [www.sak.sk](http://www.sak.sk), October 19, 2022<sup>14</sup>

The Slovak Bar Association (SBA) objects to further actions taken by the law enforcement authorities related to last week's police search of the law firm's premises in the Bratislava II district, which, in the opinion of the SBA, aims to legalize the challenged illegality of the original search.

During the search of the law firm, electronic devices and media containing the data of a number of clients were illegally seized. The NAKA (National Criminal Agency) investigator was supposed to select legally protected data related to the specific criminal matter directly on the spot, with the participation of an IT expert and an independent person not acting in the relevant case (representative of the Bar). However, this did not happen - the investigator seized the entire hard drive with all the data of the law firm, while downloading the data afterwards. At the same time, the seized data was in disposition of the investigator for a long time, out of sight of the Bar representative and the IT expert.

From the point of view of the protection of the constitutionally guaranteed right to confidentiality of communication between clients and lawyers, this is an unacceptable procedure that cannot be legitimized even by participation of the Bar representative in the additional data download. "It is sad that in a short period of time the law enforcement authorities have repeatedly ignored the jurisprudence of the Constitutional Court in the matter of searches of law firms," Bar President Martin Puchalla responded.

Last week, the SBA drew attention to the threat to lawyer's confidentiality during a search of the law firm in the Bratislava II district. A similar threat to rights occurred only recently during a search of another law firm in Bratislava. With the same concern, the SBA perceives other interventions in the confidentiality of communication with clients, such as the recent illegal dissemination of alleged e-mails between a lawyer and her client in another criminal case.

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<sup>14</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1461668/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1461668/_event)

The SBA refers to the original statements of Bar President on this topic: "The Slovak Bar Association fully respects the powers 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."

#### **Press-releases in relation to the legislative proposals:**

##### **Meeting with the Prime Minister of the Slovak Republic E. Heger regarding the court map**

Source: [www.sak.sk](http://www.sak.sk), February 8, 2022<sup>15</sup>

Today, February 8, 2022, a meeting with the Prime Minister was held at the government offices, as requested by representatives of highest judicial institutions. The President of the Supreme Court of the Slovak Republic Ján Šikuta, the President of the Supreme Administrative Court of the Slovak Republic Pavol Nad', the President of the Slovak Bar Association Viliam Karas and the Prosecutor General Maroš Žilinka sent a letter to the Prime Minister Eduard Heger on 28 January 2022 with a request for a joint meeting regarding the court map legislative draft with participation of the Minister of Justice Mária Kolíková.

President of the Supreme Court, President of the Bar and the Prosecutor General stated that a number of their proposals submitted in the inter-departmental comment procedure on the first draft of the court map were not heard and did not go through a proper procedure. At the same time, they stated that they consider the submission of the third draft of the court map to the National Council of the Slovak Republic without a proper legislative process and without opportunity to comment on the draft and even without any discussion about it, to be significantly non-standard.

We appreciate that the Prime Minister responded to our call and created an opportunity for a joint discussion on the draft court map. However, we believe that such discussions should have occurred continuously in the process of creating the judicial map, not so late - at the stage when the judicial map is submitted to the National Council and the acceptance of possible comments is only possible through parliamentary proposals.

At the meeting, the representative of the Bar, Vice-President Ondrej Laciak, communicated several fundamental comments on the reform proposal. We have clearly named the problems and impacts of some of the proposed measures. Our effort is not to jeopardize the use of funds from the EU recovery plan allocated for justice reform, but to ensure that this reform is well prepared and has positive results in practice. However, drawing financial resources from the recovery plan cannot be the only justification for the incomplete and insufficiently communicated reform and its effects on the entire justice system.

##### **The Ministry of Justice is preparing a proposal to reform the preliminary proceedings**

Source: [www.sak.sk](http://www.sak.sk), February 17, 2022<sup>16</sup>

Today, February 17, 2022, the Ministry of Justice of the Slovak Republic presented a proposal for revision of the pre-trial procedure in criminal matters. The SBA has been dealing with this topic for a long time, but we were not invited to drafting process. The Criminal Law Committee of the SBA will analyse with the proposal.

Viliam Karas, Bar President: "We have carefully listened to the proposals presented today. At the moment, it is premature to comprehensively evaluate the proposed changes. We welcome the reduction of the basic period of detention to 3 months, as we have proposed for a long time. We would like to support changes aimed at improving the functioning of the pre-trial proceedings, but we are very sensitive to efforts to strengthen the position of the state authorities at the expense of citizens' rights and defence, as guaranteed by the Constitution of the Slovak Republic, as well as international obligations by which the Slovak Republic is bound. Considering the fact that our country already has too much

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<sup>15</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1192986/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1192986/_event)

<sup>16</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1197734/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1197734/_event)



experience with the abuse of criminal law, it is necessary to approach the weakening of the rights of citizens in favour of the State all the more strictly.”

### **Judicial reforms should not be adopted through non-standard legislative procedures**

Source: [www.sak.sk](http://www.sak.sk), March 24, 2022<sup>17</sup>

In a few days, the National Council of the Slovak Republic will decide on part of the so-called court map reform, which reorganizes the seats and districts of the district courts. On the basis of earlier political statements, it appears that when approving it, MPs are also considering the use of non-standard legislative procedure that would circumvent the results of the vote from the previous session. Significant judicial reform would thus be adopted gradually and partially instead of single regular legislative process.

Abbreviated legislative procedures or various forms of circumvention of standard legislative process were one of negative phenomena of the emergency state during the pandemic. If there were arguments for "bending" some legislative rules during the pandemic, it was possible due the need to adopt quick solutions in order to protect life and health. However, it is difficult to defend this way of adopting systemic justice reforms.

The Slovak Bar Association assumes that if the reform were to be adopted in the form of subsequent extensive legislative amendments, the content of which was even not supported by the MPs at the last parliament meeting, it could lead to its subsequent questioning from a constitutional point of view, and ultimately to even lower acceptance of the reform by legal practice. Adhering to the rule of "the end justifies the means" has, in our opinion, always brought more harm than good in the judiciary. From a professional point of view, we therefore consider it better that a smaller part of the reform be approved, but of good quality, than to enforce at all costs even those parts against which there are the most serious professional reservations.

### **The opinion of Bar President Viliam Karas on the adoption of the judicial map by the National Council of the Slovak Republic**

Source: [www.sak.sk](http://www.sak.sk), April 27, 2022<sup>18</sup>

"In the process of preparing the new judicial map, the Slovak Bar Association sometimes faced accusations that it was against justice reforms. Nothing is further from the truth. In fact, the SBA has clearly supported the fundamental goal of the reform to improve the quality of the judiciary from the beginning. In the interest of this goal, we devoted a lot of energy and time to the preparation of factual and professional comments that we raised within the legislative process. At the same time, we called intensively on the Ministry to strive to achieve the broadest possible professional agreement in the basic principles of the reform. Today, this legislative process is at the end - if the law is signed by the President, it will become a part of legal practice after it enters into force.

Regarding the impact of the new judicial map on the work of lawyers, we expect a higher demand for professional legal advice and we also expect the reform to finally deal with new possibilities, e.g. on the hearing via videoconferences. As for the real impact on citizens and the efficiency of justice, we repeatedly drew attention to the risks. Despite of that, today we sincerely wish that those impacts would only be positive and bring about a real improvement in the activity of the courts.

In connection with the ever-increasing length of court proceedings in commercial disputes, we also recommend that every entrepreneur, when concluding contracts, responsibly consider who will resolve potential future disputes and always consult the lawyer on this matter. In this context, the Slovak Bar Association recalls the possibility of using arbitration clauses of our Arbitration Court ("the Arbitration Court of the SBA") when creating contracts, thus avoiding the risk of long-term disputes before general

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<sup>17</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1244518/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1244518/_event)

<sup>18</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1310821/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1310821/_event)

courts (the average duration of proceedings before the Arbitration Court is around four months for ordinary commercial disputes).

**Lawfulness and effectiveness of criminal proceedings with an emphasis on preliminary proceedings - joint statement of representatives of the Supreme Court, General Prosecutors Office, Slovak Bar Association and law faculties**

Source: [www.sak.sk](http://www.sak.sk), July 6, 2022<sup>19</sup>

"We, the representatives of the highest judicial authorities, the academic field and the lawyers' professional self-government, consider it necessary in the context of current developments in justice to emphasize several 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):

- The effective fight against criminal activity and the fair punishment of perpetrators can be achieved exclusively by legal means, with full respect for the fundamental rights and freedoms of natural and legal persons. Any attempt to apply the "end justifies the means" approach in criminal law must be rejected as unacceptable and incompatible with the principles of a democratic state and the rule of law.
- An essential prerequisite for a fair criminal trial is that every relevant suspicion of abuse of the criminal procedure instruments, especially custody, is reliably investigated.
- The state - represented above all by the legislative and executive powers - is obliged to create a legal framework for law enforcement authorities, courts and defense lawyers, so 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 SR republic and international conventions. At the same time, effective protection of rights must also include consistent respect not only for the autonomous status of law enforcement authorities, the independence of courts and judges, but also for the independent exercise of the legal profession and the independence of the legal profession as such.
- Criminal law as a whole and its individual instruments must be applied with regard to the principle of ultima ratio, and interventions in fundamental rights and freedoms must be implemented only to the extent truly necessary to achieve the purpose of criminal proceedings. In specifics, it is also about respecting (but not only) the following rules:
- Proper justification of the decisions of the authorities in pre-trial proceedings, which answers all questions relevant to the decision.
- Law enforcement authorities must be fully aware of their true role, which is, according to the Criminal Code, with the same care to clarify the circumstances testifying against the accused, as well as the circumstances testifying in his favour, and in both directions carry out the evidence in such a way as to enable the court to make a fair decision. Resigning from fulfilment of this obligation can (and usually does) lead to distortions in the enforcement of justice through criminal proceedings.
- Every criminal proceeding can be the subject of open public discussion and legitimate criticism. Nevertheless, it is necessary to strongly reject any unreasonable and defamatory attacks against judges, prosecutors, police officers, but also against lawyers. A democratic society must respect freedom of expression, but its functioning must also include basic respect for judicial authorities and protection of their representatives from unreasonable attacks (especially from representatives of other state power branches). Such attacks can even constitute means of impermissible pressure on the decision-making of judicial authorities, or exercise of their profession.
- Regarding institute of the accused cooperating with authorities, the so-called "penitents":
- Institute of a cooperating accused or a witness is an important procedural tool in the fight against organized crime. However, promotion of the public interest in detection of serious criminal

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<sup>19</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1368937/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1368937/_event)

activity and the punishment of offenders must not lead to a violation of the right to a fair trial protected by the Constitution and international conventions.

- Therefore, law enforcement authorities and courts must be particularly cautious when using cooperating accused or witness, given the increased risk of expedient testimony of such a person in exchange for offered or obtained benefits, which according to Slovak law include the possibility of stopping the criminal prosecution of a cooperating accused.
- In accordance with the jurisprudence of the European Court of Human Rights, which is taken into account in the decision-making by the Constitutional Court of the Slovak Republic, as well as the Supreme Court of the Slovak Republic, the statements of cooperating accused must be carefully evaluated already in the pre-trial proceedings in the context of other evidence, especially in situation, if it is a decisive incriminating evidence.

### **Slovak Bar Association on the proposal to postpone the effect of changes in the seats and districts of courts (the so-called “court map”)**

Source: [www.sak.sk](http://www.sak.sk), October 10, 2022<sup>20</sup>

The Slovak Bar Association takes note about the announced intention of the Ministry of Justice of the Slovak Republic to propose a postponement of the effectiveness of changes in the court seats and court districts, as well as a postponement of the establishment of new administrative courts (the so-called court map).

"The SBA supports the intention to postpone the effect of changes in the court map to June 1, 2023. We think that in the current situation, this is the only possible solution to prevent the courts from becoming dysfunctional due to delays in preparations for the reform," said Bar President Martin Puchalla.

In addition to solving the practical aspects of the reform, however, in our opinion, it is equally - if not more - important that this time is used to clarify the method of filling new judicial positions. The transfer of judges between courts must be carried out in such a way that there can be no arbitrary interference with judicial independence, and thus also with the parties' right to a legal judge.

At the same time, the SBA calls for the renewal of the necessary professional dialogue, within which the possibilities of further material corrections of the reform would be examined (especially, for example, creation of municipal courts).

### **Press-releases in relation to criminal prosecution of lawyers:**

#### **The Slovak Bar Association statement on criminal prosecutions of lawyers**

Source: [www.sak.sk](http://www.sak.sk), April 25, 2022<sup>21</sup>

In connection with the ongoing criminal prosecutions of lawyers, the Slovak Bar Association has been repeatedly called upon by the media and the accused lawyers to take a position on these proceedings. In order to avoid any doubts, based on the legally defined tasks of the Slovak Bar Association as an independent state organization, we present the following statement on the topic of criminal prosecution of lawyers (i.e. not only on current cases):

The Slovak Bar Association does not have the authority to influence the decision-making of law enforcement authorities in specific matters. As a self-governing body, we fully respect the exercise of the powers of state authorities, especially the courts. At the same time, as a professional organization, we do not interfere with the autonomous work of defence lawyers, even in cases where criminal proceedings are conducted against a lawyer.

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<sup>20</sup> Available at: <https://www.sak.sk/web/sk/cms/link/news/1447707>

<sup>21</sup> Available at: [https://www.sak.sk/web/sk/cms/news/form/list/form/row/1306170/\\_event](https://www.sak.sk/web/sk/cms/news/form/list/form/row/1306170/_event)

Despite the above, it is true that in the past the Bar has noted tendencies of law enforcement authorities to penalize lawyers not for their own criminal acts, but only for the fact that they are performing their work. It is therefore appropriate that in the criminal prosecution of any lawyer, attention should also be paid to the protection of the right to defence. We emphasize that the free and independent exercise of the defence is a guarantee of a fair trial and the rule of law in a democratic society. When prosecuting lawyers, it is therefore always necessary to evaluate the case from the right to defence point of view and the requirements of a fair trial, which also requires equality of arms between the prosecution and the defence. Otherwise, there could be a violation of the equality of arms of the prosecution and the defence in criminal proceedings before the courts, and the right to a fair trial could be threatened.

In view of these principles, the Slovak Bar Association issued a statement to the media on the same day the lawyers were detained (April 20, 2022), in which, in accordance with its defined tasks, it refused to comment on specific proceedings. But at the same time the Bar pointed out the need for increased prudence in criminal prosecutions of lawyers: "Without commenting in any way the ongoing criminal prosecutions, we remind you that in accordance with the established jurisprudence of the ECtHR and the Constitutional Court of the Slovak Republic, it is necessary to proceed with the highest degree of caution when prosecuting lawyers (as well as judges, prosecutors), in view of the possible connection with the protection of the right to defence as one of the fundamental pillars of the rule of law." (Press release of the SBA April 20, 2022).

The Slovak Bar Association insists on this position and, in accordance with its mission to protect and promote the interests of lawyers, the Bar again draws attention to the principles that must be taken into account when prosecuting lawyers, especially if it is a custodial prosecution. Without evaluating individual criminal proceedings, we also point out in this context the wording of the Constitutional Court of the Slovak Republic judgment no. III. ÚS 33/2021. This is a finding from the proceedings in which the Bar participated as *amicus curiae*. We quote from the judgment:

"Similarly to the ECtHR, the Constitutional Court is of the opinion that the custodial prosecution of persons who work in the field of law (judges, prosecutors, lawyers) must be subjected to the strictest assessment (e.g. the judgment of the ECtHR dated 16/04/2019 in the case of *Alparslan Altay c .Turkey*, Complaint No. 12778/17 in relation to judges). In case of lawyers, not only the exercise of the lawyer's free profession is at stake, but every criminal prosecution of a lawyer related to the exercise of his profession also contains a chilling effect for other lawyers to provide legal assistance for the benefit of clients, thereby weakening trust in the rule of law. Lawyers play a key role within the judiciary as they act as intermediaries between society (the clients they represent) and the court. Their role is to ensure trust between society and the courts, which makes this role irreplaceable in a democracy and the rule of law (see the judgment of the ECtHR in the case of *Francois v. France*, complaint no. 26690/11, point 51 and there cited case-law). Therefore, in the criminal prosecution of lawyers, or their custodial prosecution, it is necessary to proceed with the highest degree of caution."

In our opinion, the Constitutional Court of the Slovak Republic has hereby set clear rules by which law enforcement authorities and courts are obliged to follow.