Questionnaire for civil society and bar associations

1. **Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the** [**Basic Principles on the Role of Lawyers**](https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx)**, please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner.**

Right to legal protection and assistance is one of the constitutional rights derived from the Slovak Constitution (Articles 46 to 50) which must be fully guaranteed. This would be, however, impossible for lawyers without independence from all subjects and Slovak Bar Association independence in the area of disciplinary competence.

Section 2 para. 2 of the Act on the Legal Profession:

*When providing the legal services, each lawyer shall act independently, shall be bound by the generally binding legal rules, and within the limits of the same also by the client´s instructions.*

Section 66 para. 2 of the Act on the Legal Profession:

*The Bar is an independent professional organisation associating all the practising lawyers admitted to the Bar.*

Preamble of the Slovak Bar Association Rules of Professional Conduct:

*In a society founded on respect for democracy and the rule of law as one of the most important constitutional principles a lawyer plays a vital role. The lawyer must serve the interests of justice as well as the interests of those, whose rights and liberties he is entrusted to defend or represent. A lawyer´s function therefore lays on him a number of legal and moral obligations in relation to his clients, courts and other authorities before which the lawyer pleads his client’s case or acts on his client´s behalf, the public for whom the existence of a liberal and independent legal profession is an essential means of safeguarding human rights and freedoms in face of the power of the state.*

Section 2 para. 3 of the Slovak Bar Association Rules of Professional Conduct:

*The lawyer may render legal services only within the limits of his independent and liberal practice of law. The lawyer may neither participate in any activities of persons, who render legal services without a statutory authority and licence, nor support such activities.*

Section 38 of the Slovak Bar Association Rules of Professional Conduct:

*The lawyer shall act before the courts and any other authorities in such a way so as to avoid any interference with his independence. He shall show due respect towards courts and other competent authorities. His behaviour including his appearance add to the honour and credit of any act he is involved in, as well as to the status and dignity of the entire legal profession.*

Independence of lawyers is intertwined with the independence of the bar association. The legal profession in Slovakia is governed by the Slovak Bar Association, a self-governing organization which through its bodies has powers to develop and implement code of professional conduct and to adopt internal regulations in order to govern its members. Other functions pursued by the Bar are described in more detail in question 4.

1. **What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.**

Legal profession in Slovakia is governed by the Act on the Legal Profession and internal (ethical) regulations adopted by the Bar. Based on them, it is the **duty of the lawyer to act independently**. Violations of the Act and regulations by lawyers themselves (which may also include a breach of the duty to act independently) are assessed and punished in individual cases by the Bar in disciplinary proceedings. If a violation is found, a disciplinary measure may be imposed on the lawyer according to the Act (written or public reprimand, fine, suspension of practice, disbarment). Disciplinary proceedings belong to the competence of independent bodies of the Slovak Bar Association (Disciplinary Committee and Disciplinary Committee of Appeal). Final decisions of disciplinary bodies may be subject to judicial review by the Supreme Administrative Court of the Slovak Republic (cassation principle). Ministry of Justice has powers to file a complaint or submit a petition to directly initiate disciplinary proceedings.

Different situation arises with regard to **alleged external interference** with the independent exercise of legal profession. If there is a violation of law other than the Act on the Legal Profession, the lawyer may initiate the relevant proceedings, which is in the competence of public authorities (e.g. law enforcement authorities, courts, etc.) for example arguing the misuse of powers, corruption, unlawful detention, etc. The lawyer concerned may equally file a constitutional complaint or application to the European Court of Human Rights.

The Slovak Bar Association also **responds to legislative initiatives** that could affect the independence of lawyers or the Bar itself. For this purpose, the Slovak Bar Association is actively involved in the legislative process in many areas and maintains a dialogue with representatives of both the legislative and the executive bodies.

1. **Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country, and describe them.**

In recent years, there is a growing concern that lawyers are targeted (and also under surveillance) because they provide legal services to certain persons. There are cases when lawyers have been put in collusive custody, their offices were searched and they were associated with their clients in media, without concrete foundations. Particularly in the past two years this have had a chilling effect on the legal profession. It is not necessary to have a high figure of cases of this kind, even a few cases may have impact on the whole legal profession.

In the past the appointment of ex offo defence counsel by judges was perceived as having negative effect on the principle of independence. Judges used to appoint only a certain circle of lawyers in the region. This was changed by a new legislation the introduced an automated system of appointments of lawyers that guaranteed even distribution of cases without any interference of judge.

1. **Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?**

Slovak Bar Association is recognised as independent by law and it is independent de jure as well as de facto. Slovak Bar Association serves as an institutional guarantee of independence of lawyers on several layers:

* + Preventive phase:
* Bar Association Presidency Council on a monthly basis issues positions on requests addressed to the Bar by lawyers, trainee lawyers and other subjects that require interpretation of law related to the legal profession (Slovak Bar Association Working Group on core issues of the profession) and on compatibility of legal practice with other activities (Slovak Bar Association Working Group on Compatibility). Any activity that causes doubts in relation to the independence of lawyer or legal profession must be declared incompatible regardless of its legal form, circumstance, scope and length, remuneration or lack of it.
* In March 2020 Slovak Bar Association standardised the rules for assessment of compatibility of other activities with ethical principles of the legal profession.
* Slovak Bar Association provides mandatory training on deontology to all trainee lawyers and deontology is part of the lawyers´ exam.
* Slovak Bar Association adopts resolutions and internal regulations that delineate duties and responsibilities of lawyers vis-a-vis their clients, courts and other institutions.
  + Reactive phase:
* Slovak Bar Association is responsible as self-regulated professional body for decision-making on the professional misconduct of its members and issues disciplinary sanctions.
* The Supervision Committee, Disciplinary Committee and Disciplinary Committee of Appeal deal with any breach of obligation addressed to it or on its own initiative. Slovak Bar Association Rules of Disciplinary Procedure provide for the strict system of disciplinary procedure and disciplinary sanctions, including striking a person of the list of lawyers.
* For the past ten years Slovak Bar Association have been issuing Collections of Disciplinary Findings that provide for transparent, consistent and foreseeable decision-making, as well as to raise awareness of the ethical nuances.
* In 2017 additional detailed rules related to standards of disciplinary decision-making and sanctions were approved by the General Assembly of Lawyers.

1. **Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?**

Statistics on disciplinary proceeding and disbarment show a number of final decisions adopted by the Disciplinary panels in the given time period, number of decisions that declared that there was a misconduct committed by the lawyer and number of disbarments in the given year.

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| --- | --- | --- | --- | --- | --- |
|  | 2016/2017 | 2017/2018 | 2018/2019 | 2019/2020 | 2020/2021 |
| Final decision | 93 | 108 | 69 | 53 | 84 |
| Misconduct | 76 | 88 | 52 | 45 | 71 |
| Disbarment | 2 | 0 | 0 | 2 | 1 |

1. **Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.**

Lawyers in Slovakia are facing an indirect threat to their independence in two forms: first being the threats and harassment of lawyers from persons encountered in the course of their practice, and second, identification of lawyers with their clients, which is especially problematic in case of defence lawyers.

The purpose of defence is still misinterpreted and misunderstood by the media and society. Unfortunately media often use expressions that intensify the wrong impression of lawyers and the concept of defence of rights. Fulfilment of lawyer´s obligation to represent a client does not mean that the lawyer approves of the client´s doing and lawyers cannot be harassed or prosecuted for the fulfilment of their statutory and constitutional duties.

It is important to raise awareness on the rule of law principles and concepts in the Slovak society 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.

Recent 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 custody for 565 days and the accusation was based on the fact that he provided defence to members of organised crime group. This was confirmed by the Constitutional Court of the Slovak Republic. Slovak Bar Association was involved through Amicus Curiae and called for respect of the principle that a lawyer cannot be prosecuted for the provision of legal services.
* Lawyers were detained by National Criminal Agency without proper grounds (confirmed by the Supreme Court of the Slovak Republic).
* Lawyers were put under surveillance after taking over defence of certain persons.
* It was publically suggested by state body that a member of the Judicial Council, who is a lawyer, should resign from the post due to the personalities of clients she represented.
* 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 written warrant.
* Several defence counsels have drawn Bar´s attention to the tendency to criminalize lawyers´ activities, not only in the scope of the lawyer's activities in criminal proceedings, but also in representing clients' rights in all types of court proceedings and other proceedings before public authorities. Proposing witnesses and examination of witnesses by a lawyer on behalf of the client are considered by law enforcement authorities and, in rare cases, by the courts as fulfilling the objective aspect of the crime of obstructing justice or the crime of perjury.

1. **What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.**

Slovak Bar Association is active in the following areas:

* + Monitoring of legislative proposals
  + Supervision of the profession via assessment of complaints and disciplinary powers
  + Round tables and inter professional dialogue on the rule of law issues, including independence
  + Public statements to raise awareness
  + Amicus Curiae

Slovak Bar Association is a member of International Bar Association (IBA) and Council of Bar Associations and Law Societies (CCBE) and cooperates with other Bar Associations on bilateral, regional and international level. Especially within CCBE the Slovak Bar Association participates in the monitoring of EU legislation proposals, responds to questionnaires, such as EU Justice Scoreboard questionnaire on independence, Annual European Commission Rule of Law Report, etc.

1. **To what extent has, the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.**

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 last 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 cancelled, conditioned on negative test or counsels were requested to limit their visits. Online consultations were not allowed or facilitated.

From the health risks perspective, the court rooms are in principle very small and therefore there were time periods during pandemics when lawyers were uneasy as other participants often refused the use masks or due to insufficient ventilation.

1. **Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.**