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Slovak Republic

Legal and Judicial Sector Assessment

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Foreword

THE purpose of this legal and judicial sector assessment is to evaluate Slovak Republic's legal and judicial systems and institutions, and identify their strengths and weaknesses. The assessment serves as a flexible tool for application across countries and legal systems, applying a broad based, demand driven and bottom-up methodology. The legal profession has emerged as a principal issue of concern within Slovakia's justice sector, and as a result, it is a major component of this report.

The quality, transparency, and independence of the legal profession is a critical component of a well functioning legal and judicial sector. The Bank has not previously focused significant attention on the development of the legal profession. This assessment affords the opportunity to begin building a broader understanding of the importance of the need for reform in the legal profession and its impact on countries such as Slovakia.

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Introduction

THIS report is divided into two parts. The first part, which concentrates on the Slovak Judicial Sector, identifies areas where court performance could be improved through better management. It begins with a description of the courts then turns to an analysis of the overall management of the court system and the courts' performance.

The second part of the report concentrates on the Legal Services provided by attorneys and commercial lawyers. It analyzes the appropriateness of the framework in which legal services are supplied, including the self-regulation of the legal profession, to ensure adequate access to legal services for all users. The government's role in regulating the legal services markets to ensure that all citizens, including underprivileged groups, are afforded adequate access to legal services, is discussed.

The report relies on a combination of data sources, including surveys, interviews, expert assessments, and statistics, all of which provide a basis for cross-reference. A major source of information was the findings of a World Bank-U.S. Agency for International Development (USAID) survey that analyzed the level of corruption in Slovakia. Court statistics were used with care, owing to potential problems with their collection and organization. European Union (EU) standards and practices were used as benchmarks in analyzing the legal services market.

The Judicial Sector

Legal and Institutional Framework

Slovakia's legal framework and institutions have a rich history and, since the separation of the Slovak Republic from the Czech Republic in 1993, they have entered a stage of dynamic transformation that has encompassed a transition toward a market-oriented economy and the redevelopment of a democratic state. The basic framework of the judiciary is laid out in the Constitution and the Law on Courts and Judges, the Law on Senior Court Clerks, and the Law on the Judicial Council. Procedural law is found mainly in the Civil and Criminal Procedural Codes. The Slovak Judiciary consists of the courts, including a self-administered Supreme Court, and the Constitutional Court. The Judiciary is separated from other branches of government and is defined as independent in the Constitution.

Court Structure

The Slovak court system has three tiers: the Supreme Court, the regional courts, and the district courts. The Supreme Court and regional courts have both original and appellate jurisdiction. Three regional courts function as bankruptcy courts, and eight district courts function as company registers. The courts are located in the administrative centers of districts and regions defined by the 1996 administrative map, which dictates their geographical jurisdiction (despite the fact that the administrative map was changed again in 2001). The judicial map depicts a fragmented judicial system that is characterized by many small courts that are costly to manage. Each court has a president, vice president(s), judges, lay judges, judicial interns, and support staff.

Judicial Governance

The key challenge to Slovak judicial governance is the fragmentation of the management framework. The institutions involved in judicial management in Slovakia are many and include the President, the Parliament, the Executive represented by the Ministry of Justice (MOJ), the Council of Judges, and the Supreme Court. The question arises whether such a complex management structure can successfully implement the much needed reform measures in the justice sector. The Slovak example also begs the question of whether a different, simpler structure would execute management responsibilities more effectively and efficiently.

Excessive fragmentation can manifest itself in (a) management capacity, which is spread thinly among different institutions so that courts cannot perform up to standards, and (b) the lines of accountability, which are unclear to the point where no single institution can be held accountable for the performance of the judiciary as a whole. As the Slovak court management system suffers from problems of both management capacity and accountability, the government should develop appropriate measures to consolidate the system.

In Slovakia, first, the Council of Judges of the Slovak Republic could be more effective as an advisory body than as a body with management functions. The Judicial Council would be able to amplify the voices of judges better if its mandate were altered; its management responsibilities are extensive for an organization that is staffed with individuals employed full-time elsewhere. Second, the Parliament's capacity to appoint judges through a transparent and contestable process is preferred to the current system whereby the President can delegate this function to appointed officials in his or her office. The lack of transparent criteria and procedures for judicial appointment by the President is one reason this is not the preferred process. Finally, in order to improve the MOJ's ability to be a more effective court manager, the government should restructure and strengthen the MOJ's management capacity.

Management of Judges

Increasing the effectiveness of human resources in the court system should become a priority of judicial reform because of the decisive role that the behavior of judges and other court staff plays in strengthening the delivery of justice and curtailing corruption. Human Resources Management (HRM) includes, among others, the following topics: employment structure, prerequisites and procedures for becoming a judge, judicial education, judicial promotion, judicial compensation, management of the performance of judges, and discipline of judges. The cross-cutting theme for all these topics is integration; in order to ensure that judges are sufficiently qualified and have adequate performance incentives, the HRM system should be comprehensive and well coordinated.

The Slovak court system has one of the highest numbers of judges per capita in the world: 23 judges per 100,000 Slovaks or about 1,250 in total, of which 90 reside at the Supreme Court. At the same time, one international comparison suggests that the Slovak support staff-to-judge ratio of 2.6:1 may be low.[1] Moreover, the majority of support staff positions play a limited role in court management, are poorly compensated, and tend to attract people without university educations. Lay judges, who contribute to the majority of court decisions, are not used in the most effective way either, as their role in decision making is not matched by their qualifications.

The human resource strategy should ensure that tasks are assigned to personnel who can meet performance standards at minimal costs. Pilot court modernization activities produced evidence that the roles of support staff should be carefully planned, as many can take on more responsibilities. The role of the lay judges should be re-evaluated in order to balance the value of the transparency that they add to the court proceedings with the transaction costs of their involvement in court decision making processes.

[1] These data are compiled partially from the LJR website (http://www.worldbank.org/ljr), under the Legal and Judicial Sector at a Glance database.

The prerequisites for judgeships include Slovak nationality, integrity, legal competence as verified by a law degree from a Slovak university, a minimum age of 30, three years of apprenticeship, and successful completion of a special examination. In the majority of cases, the selection of judicial apprentices is the first step in the selection of judges. The apprenticeship program is managed by the MOJ according to its internal procedures. Under the supervision of judges, apprentices participate in hands-on, interactive activities that allow them to "learn by doing." The current judicial apprenticeship program could be strengthened by stipulating in a law clear selection criteria and procedures for the program, introducing standardized anonymous written entrance and final examinations, granting unsuccessful candidates an opportunity for appeal, and strengthening its theoretical component.

The appointment of judges is a prerogative of the President; their nomination is a prerogative of the Council of Judges. Both institutions enjoy wide discretion in interpreting and applying the selection criteria. The present selection system has many challenges, including: improvement of the Council's institutional capacity for this task; a perceived conflict of interest in the Council's management of judges and its promotion of their interests at the same time; the ineffective separation between the powers of nomination and appointment of judges, given the President's power to nominate three members of the Council; and the weak institutional accountability of the Council. In order to enhance the transparency of judicial selection, the related criteria and procedures should be stipulated in the law. Elements of a probation period could be reinstated, with subsequent automatic appointment for life subject to satisfactory performance of newly appointed judges.

The education and training of judges are the responsibility of the MOJ. Once appointed, all judges undergo a four-year training program. Apart from that, the judges participate in occasional seminars organized by the MOJ, its Institute for Education, the Association of Judges, and the regional courts. The users of the court system and the court professionals themselves admit that quality suffers greatly from the inadequate skills of judges and other court staff. In order to ensure that the judges maintain and improve their skills, an integrated training system should be developed as an integral part of the overall human resources management system.

Judges are promoted by the Council of Judges to higher courts and by the MOJ to court president and court vice president. Transparent criteria for such promotions are not defined, which undermines the credibility and effectiveness of the promotion system. To address this issue, transparent selection criteria and procedures for all judicial positions, as well as appeal mechanisms, should be developed. The MOJ's authority to appoint court presidents and vice presidents should also be revisited.

Average judicial salaries are adequate within the context of overall public salaries in Slovakia. Until recently, the disparity between salaries and pensions were excessive and created pressure on judges, particularly within the Supreme Court, to delay their retirement.

Measures are now being taken to raise the judges' retirement income and to ensure that younger judges are adequately compensated. Pay is very important in attracting high-caliber individuals and in preventing corruption.

A performance management system is essential for improving the effectiveness and efficiency of the courts. The first unsuccessful attempts to introduce such a system proved its complexities. In the future, the establishment of an effective system for performance management will require transparent performance standards that could be available as regulation, or could be internal procedure that is published. Refining performance indicators should be a continual and participatory process centered on the priorities of modernizing the court system. Performance monitoring should be conducted at various aggregate levels of the judiciary, and performance review of individual judges should become a mechanism aimed primarily at identifying opportunities for better performance. How this is conducted, and by whom, should be carefully considered to ensure that it protects judicial independence.

The judicial discipline system appears ineffective when considered in relation to the perceived level of corruption in the Slovak judiciary. In recent years, members of disciplinary panels have been elected by the Council of Judges from candidates proposed by the regional Judicial Councils. Only Supreme Court judges can compose the appellate disciplinary court. The Constitutional Court is the disciplinary authority for the President and Vice President of the Supreme Court. The lack of an ethics code of conduct contributes to the ineffectiveness of the disciplinary system. As a result, the judiciary needs to pay greater attention to issues of judicial ethics and conduct and develop an anticorruption strategy for the judiciary. The creation of a special unit for investigating the allegations of judicial misconduct would be an important component to improve the courts' performance.

Court Performance

This report attempts to assess court performance based on public perception and court statistics. Although each of the two methods has limitations that are amplified by the lack of reliable empirical data, a consistent picture is emerging. The congestion of cases, the poor quality of decisions, and the perception of corruption appear to be the most serious issues impeding successful court performance. Surveys and anecdotal evidence strongly suggest that court delays are excessive and unevenly distributed across the types of courts, cases, and litigants. Moreover, delays create incentives for corruption.

The 1998 study, "Slovak Judiciary through Public Eyes," and the 2000 study, "Corruption in Slovakia," suggest that, during recent years, the perception of corruption in Slovak courts has been widespread and, despite minor improvements since 1998, the situation is today perceived to be worse than it was 10 years ago; in fact, the courts and the health system were perceived to be the most corrupt sectors as measured by the frequency and average size of bribes. According to the 2000 study, at the time, the majority of the Slovak public, including legal professionals, were deeply concerned with the performance

of their courts, even though they differed on what the problems were and the cause. Users of court services perceived the slowness of the courts as the most serious problem.

The actual court performance may be better in actuality than in the perception of the public, if the official statistics on clearance rate and time of deposition are to be relied upon, even with major qualifications. Case processing delays, however, are indeed a serious problem that is particularly acute in the Supreme Court, where the clearance rate dropped from almost 100 to 60 percent between 1990 and 1999. Its 1999 case backlog reached 4,487, compared with only 53 backlog cases in 1990. Unlike the Supreme Court, between 1990 and 1999 the ability of the regional and district courts to handle the inflow of cases remained relatively stable, and their combined clearance rate remained at about 72 percent.

Court Administration

The courts lack administrative systems and skills necessary for such systems. Court presidents lack the managerial skills that are necessary to deal with finances, operating procedures, and maintenance of the court infrastructure.

The key ingredient in improving the quality of court management is its professionalization through the institution of full-time court administrators and the unification and integration of currently inconsistent court operating procedures. The court presidents should be given assistance in administering the courts on a day-to-day basis so as to concentrate on their role as leading judges.

Court administrators can assist with this administrative agenda and prepare policies to be considered by judges. They can manage the non-judicial staff, including experts and lay judges, court finances, information, case flow, other elements of the court infrastructure, and interagency coordination. The government can organize court administrators in a vertical structure, with the top court administrator (responsible for court administration) located at the MOJ.

Financial resources management in the justice sector is facing several challenges. First, the financial planning horizon is too short to design and carry out reform measures. Second, policy objectives currently do not drive the budget process, which is oriented toward historical spending patterns rather than priorities for the future. Third, policy development does not sufficiently take into account the budgetary implications of the proposed actions. Finally, the current cash-based accounting system is incapable of providing complete and comprehensive financial information.

The weaknesses in the budget formulation result in the inconsistencies and shortages that appear at the implementation stage. For instance, the MOJ and the courts lack the capacity to anticipate and plan for contingent liabilities. As a consequence, the courts owe significant amounts of money to the lawyers that they employ for mandatory representation. Although

the recent augmentation of the official lawyers' rates may increase these MOJ expenditures, this has not been yet reflected in the MOJ's latest budget proposal, which argued that there would be no need for a related budgetary increase.

The time horizon for budgeting should be increased to allow the justice sector to anticipate the levels of funding beyond an annual budget cycle. The introduction of program budgeting, which makes transparent not only where public resources are spent, but also what is being delivered with the budget, would be critical to enhancing court performance. Moreover, the court budget should be integrated into the overall justice sector budget in order to allow for the transparent resolution of the intrasector policy trade-offs. In addition, the budgeting of the courts needs to become more transparent in allocation methods and should take steps to compensate for the deficiencies of cash accounting.

Case management[2] in Slovakia faces many challenges, including a lack of integration and coordination within the system. An absence of common data elements and formats undermines the cohesion of court information; for instance, documents dealing with the same aspect of a procedure differ in form and content. Deficiencies in the systems of case recording and handling that rely predominantly on paper documents also impede the management of case flow, because they limit the ability of court managers to identify priority issues and take corrective actions.

In order to modernize case management, the government has launched a major effort that aims to introduce more effective case management procedures and take advantage of the opportunities presented by modern information and communication technology. The government is seeking to replicate the positive experience generated by the pilot project at the Banská Bystrica district court, which addressed the necessity of case filing and monitoring, printing certified copies, and generating notices.

While the government rolls out the new case management system, it should be simultaneously addressing the existing manual systems and ensuring that they produce standard acceptable services. Technology can assist with, but not substitute for, clear processes. In addition, the government should undertake careful planning of all elements of the new case management project, and ensure that every component is thoroughly detailed, funded, and properly sequenced.

Court statistics benefit both internal and external users, create preconditions for accountability, and facilitate effective resource allocation. The quality of Slovak court statistics is poor. There is no tradition of generating information that is accurate and relevant for decision making, and therefore no incentive to improve the statistics. Insufficient analytical capacity and a lack of court automation contribute to the problem.

[2] This report defines case management as a system and procedures for assigning cases to judges, and for handling case-specific information within a procedural framework.

Publicly available statistical reports are scarce, inaccurate, and structured in such a way that even legal professionals have problems interpreting them. The reports exclude the Supreme Court's statistics altogether. The statistical yearbooks lack a detailed map of the judiciary, are short on analysis, are based exclusively on court reports, do not show results, and contain few performance indicators.

The MOJ should make major efforts to improve its ability to collect, analyze and disseminate comprehensive statistics. The government can then use these statistics to improve the effectiveness of its justice sector policies and to ensure that the public image of the judiciary reflects its actual performance.

Access to Justice

The costs of legal representation and court fees are some of the most critical issues influencing access to court services today. The affordability of legal representation is closely linked to the characteristics of the Slovak market for legal services, including the supply and distribution of legal aid. Although court fees are not prohibitive for the majority of the population, they can discourage the poor from litigating legitimate claims. Lawyers' fees, however, have significant affordability implications for the majority of court users. Other barriers to accessing justice are psychological, relating to the perceived level of distrust in the court system, and informational, which disproportionately affect underprivileged groups like Roma.

Legal Services

Improving the quality of court services and performance is not sufficient to ensure adequate access to justice, which in Slovakia is impeded also by the high costs and low quality of legal services. As lawyers exploit their professional monopoly and weak public oversight, the high costs of legal services make justice a privilege of the rich. The high costs of legal services result from government acceptance of a system in which the supply of legal services continually lags behind demand, and from the large information gap between service providers and consumers, which is exacerbated by the unstable and nontransparent regulatory and institutional environment.

Justification for regulation of legal services is to be found in the noncompetitive features of the legal services market that make the price of legal services dependent on the value that clients place on them, rather than on the costs of services. The monopolistic features of the legal services market create disparities in the consumption of legal services between the poor and the rich that translate into disparities between firms and individuals, particularly those from underprivileged groups. A number of policy options are available for improving access to legal services, including reducing information asymmetry, encouraging provider competition, reducing professional monopolies within the profession, and strengthening public oversight over the legal services market.

Market for Legal Services

Although the Slovak economic transition resulted in a rapid increase in the demand for legal services, the supply has remained inadequate. Artificial barriers to legal education and the legal profession have created a sustained lack of local lawyers. Moreover, strict barriers have been imposed on foreign lawyers, who even today are prevented from practicing in Slovakia. Competition is further undermined by restrictions on law firms, specialization, and advertising.

Self-regulation of the legal profession has left would-be litigants or defendants poorly protected from less than adequate legal representation. The information gap between clients and legal service providers is much greater than in Western countries. Consumers have little information they need to make educated choices in selecting lawyers and defending their interests before them. The quality of legal services is not adequate; this is exacerbated by the fact that lawyers are the main agents of corruption in the Slovak courts and contribute to delays in court proceedings.

Throughout the 1990s, the government, in setting policies for the markets of legal services and delegating public functions to the bars, followed Western models without fully considering the impact of such policies within the Slovak context. The government's recent interventions in the market were limited to increasing the official lawyers' fees and benefited mainly the legal service providers.

Regulation of the Legal Profession

The Slovak Constitution (articles 29, 37), the Law on Attorneys, and the Law on Commercial Lawyers provide the legal framework for the provision of legal services, including the organization of the legal professions and the establishment of their bars as public entities. The Constitution gives the citizens the right to be counseled and represented in legal affairs.

The formation of an independent legal profession in Slovakia was initiated in the early 1990s. Under the influence of vested interests, the profession was divided into attorneys and commercial lawyers, each group with its own legal and institutional framework. Both attorneys and commercial lawyers are represented by bar associations, which do not report to the government.

The organizational structures of the Bar of Attorneys, which maintains a monopoly over criminal defense, and the Bar of Commercial Lawyers, which enjoys the same authority with commercial cases, are similar: The highest authorities within both are General Assemblies, which elect the Board of Chairpersons, the Disciplinary Chamber, and the Audit Chamber. Daily management of the Bars is carried out by a Secretariat.

A divided legal profession in Slovakia can hardly be justified unless it is based on specialization and can result in better service to clients. Serious consideration should be given to either merging the bars or eliminating any privileges of the bar associations vis-à-vis each other.

The services offered by Slovak attorneys and commercial lawyers include: civil, commercial, and administrative litigation; contract drafting; support in negotiations; mediation; and legal analyses. Other legal professionals, or even nonprofessionals, are allowed in most court matters to represent litigants on a no-fee basis. There is some overlap in the scope of services provided by lawyers and other legal professionals, for example, notaries.

However, extraprofessional competition appears to be weak, which can be explained by three shortcomings of the current system. These include: the lack of lawyers in Slovakia; the attorneys' and commercial lawyers' monopoly over pleadings before the courts on a fee basis; and the entry barriers for foreign lawyers.

Some countries have a positive experience with avoiding the professional monopoly of lawyers. Consumers in those countries, for example, can receive information on the qualifications of legal service providers on the basis of certifications that signal that a service provider meets certain standards, but that do not grant the certified provider any privileges in accessing the market. It is, however, critical that: (a) the government create fair conditions for competition in the legal services market, and (b) the emerging groups of professionals be subjected to monitoring and evaluation

Slovakia has about 1,472 registered attorneys and approximately the same number of commercial lawyers.[3] The number of lawyers per capita is low when compared to that in other countries. There are no direct numerical restrictions on entry into the legal profession, but the admission mechanism effectively imposes indirect restrictions, particularly on foreign lawyers. Admission to both bars is conditional on an applicant's unimpaired ability to act with legal consequences, ethics, a completed legal education, and apprenticeships that conclude with a bar exam. Registration with a bar association is for life and is subject to a flat fee.

Meeting the bar admission requirements is difficult because Slovak law schools have limited capacity, while apprenticeships depend on the ability of a candidate to enter into an agreement with a willing practicing lawyer registered with the bar. There are no transparent criteria for selecting apprentices, and such decisions are often subjective and can be corrupt. At the end of the 1990s, the length of an apprenticeship was reduced from five to three years. The apprenticeship program is not effective in improving young lawyers' skills and is not closely supervised by the bars, whose role is limited to delivering mandatory training courses.

[3] Data received from the Bars.

In order to improve the system for entry into the legal profession, the government should consider: (a) reviewing the current admission procedures in order to identify ways to speed up numerical expansion of the legal profession; (b) introducing more flexible apprenticeship requirements that would expand the options for training outside established law firms and outside Slovakia; (c) waiving the apprenticeship requirements for otherwise qualified candidates; (d) introducing automatic admission to Slovak bars for members of the EU and other foreign bars; (e) abolishing any entrance requirements that directly or indirectly discriminate against otherwise qualified non-nationals; and (f) granting the members of EU and other foreign bar associations rights equal to those enjoyed by the Slovak legal profession.

According to the official statistics in 2000, Slovakia had 1,368 practicing attorneys and 66 law firms. Only 12 percent of the attorneys are partners in associations. A typical Slovak lawyer is self-employed and does not have a specialization. The options for choosing the legal status for a law firm are limited. Attorneys and commercial lawyers can only form partnerships co-owned by practicing lawyers. Trust appears to be the decisive factor in the creation of associations. Mixed associations between commercial lawyers and attorneys are not allowed.

The restrictions on business organizations are in conflict with economic considerations. The legal status and organizational structure for a particular enterprise should minimize transaction costs, particularly those incurred in management and raising capital. Although for relatively small firms with a strong professional ethos a partnership may be optimal, for larger firms, a form of a corporation may be preferable.

One recent development, which is difficult to explain given the shortage of legal service providers, is that an increasing number of young lawyers have entered into an employment relationship with law firms. Reportedly, they pass the bar exam, but do not take the oath required to gain the status of an attorney or commercial lawyer. The reasons behind this development might be found in the entry barriers resulting from the noncompetitive features of the Slovak market for legal services.

Although the Slovak rules regarding the establishment and provision of services do not subject foreigners to any additional requirements, the regulations make it much more difficult for equally qualified foreign lawyers to join the Slovak bars. For instance, although membership in foreign bars is, in principle, not incompatible with membership in the Slovak bars, all lawyers and their associations are allowed to have only one residence. As the Slovak law restricts opportunities for business cooperation between foreign and Slovak lawyers, the most frequent forms of international cooperation are employment of local lawyers by foreign firms.

In order to ensure a reasonable level of competition among Slovak lawyers, it might be worthwhile to consider: (a) lifting restrictions on business organizations of legal service providers, and (b) developing and enforcing antitrust policies in the legal services market.

Professional relations between Slovak lawyers favor collusion at the expense of vigorous advocacy on behalf of clients. Lawyers tend to factor the concept of professional loyalty into their defense strategies, as well as their behavior toward opposing counsels. The rules of professional interaction of lawyers might need to be reviewed in the context of public interest. The users of legal services, the courts, and the lawyers themselves could benefit from well-defined and results-oriented procedures regarding lawyers' behavior in litigation.

Advertising (publicity) by lawyers is restricted by their codes of conduct. Lawyers are not allowed to solicit clients or use others to do it for them. These restrictions deprive consumers of the ability to make educated choices in the selection of legal service providers and shield lawyers from professional competition. Providing information about lawyers and their specializations can contribute to a decrease in the information asymmetry between lawyers and clients, and can be important in protecting clients' rights. Liberalization of advertising, however, should be implemented hand in hand with strengthening consumer protection and imposing safeguards against false advertising.

Protection of clients in the Slovak legal services market is weak despite the declaration of lawyers' obligation to defend clients' interests in the Law on Attorneys. The issues in this area include: (a) the difficulties clients experience in selecting an appropriate lawyer; (b) the absence of mandatory disclosure by lawyers of information on services and prices before the client signs a contract; (c) lawyers' right to decide, without consulting the client, what is in the client's best interest and how this interest should be represented. By limiting information on legal service providers available to the market, the bars have promoted the perception that lawyers do not differ in the types and quality of their services. These policies increase the clients' information costs and severely restrict competition, ignoring the interests of consumers.

A comprehensive policy, supported by regulations, on consumer protection in the legal services market should be developed in order to improve the quality of services. The policy should aim to improve public access to information about the judiciary, as well as attorneys, their specialization, and performance. Mandatory disclosure by lawyers to clients should be considered. Restrictions on advertising can be lifted, and penalties for false advertisement can be introduced.

The disciplinary system for lawyers is not currently effective in enforcing the codes of professional conduct and protecting the interests of clients. The definition of misconduct is unclear. The codes of conduct emphasize, in a disproportionately skewed way, lawyers' obligations toward their bars, as opposed to obligations toward their clients. The risk that serious consequences will sanction misconduct is minimal. Furthermore, sanctions, especially fines, are too low to discourage wrongdoing and neglect on the part of lawyers. In addition, procedures for filing complaints and initiating disciplinary procedures are too lengthy, cumbersome, and nontransparent for clients; these procedures are influenced and controlled by the bars and are consequently designed to protect lawyers' interests.

Making lawyers accountable for meeting performance standards is central to ensuring an adequate supply of legal services. Any performance standards should be focused primarily on professional ethics and transparency. The government should consider: (a) introducing a law on legal service standards that focuses on ethical norms for interactions between clients and the courts, as well as information disclosure; (b) creating mechanisms for enforcing legal services standards that would function independently of the bars and to which consumers can appeal directly if they so wish; (c) giving the consumers of legal services a choice to channel their complaints through the bars or through a disciplinary system independent of the legal profession; and (d) giving the judiciary a greater role in the supervision of the legal profession.

Cost of Legal Service

The MOJ is responsible for regulating the fees charged by lawyers, who are supposed to ensure that their work is "efficient" and that fees are "reasonable." However, the system of lawyers' fees suffers from a number of problems that leave the clients in a disadvantageous situation. First, the system of regulating lawyers' fees is routinely ignored due to a lack of flexibility. The resulting dual fee system, consisting of the notional official and the actual fee schedules, makes it, among other things, impossible for the winning party to recover its actual legal expenses.

Second, there is a set of issues related to the manner in which legal fees are calculated and supervised. Slovak regulations in this area rely on self-enforcement. There is no requirement for the lawyer either to provide an itemized bill or explain it. Fraudulent billing is not listed as a serious breach of professional ethics, and the regulations do not specify a body responsible for the enforcement of the billing rules. A dissatisfied client can only complain to the bars that, in reality, have no authority to recover excessive fees. A client can sue his or her lawyer, but with little chance of success.

Individual clients are particularly vulnerable to the excessive costs of lawyers' services because of their limited capacity to negotiate and supervise billing processes, and because firms, in addition to commanding greater resources, enjoy the tax-deductibility of legal expenses. The government should sponsor comprehensive research of the costs of lawyers' services in order to understand better the legal services market and identify viable policy options for improving the system of lawyers' compensation.

The provision of legal assistance to those who cannot afford it is essential to ensuring adequate access to legal services and justice. In Slovakia, some types of cases are exempt from court fees. In addition, the courts and the prosecutor's office provide a limited amount of free legal advice. Finally, several donor-sponsored legal clinics were created recently to provide free legal advice.

Although the Slovak Constitution does provide for free legal services, the lack of implementing regulations makes this provision little more than a declaration. Subsidized

legal aid is limited and can be granted in only a limited number of cases. In criminal cases, the courts rarely appoint ex-officio attorneys beyond the scope of mandatory representation.

The overall framework of legal aid, however, has never been adjusted to the realities of a market-oriented economy, which made legal services a luxury that few can afford. The new situation calls for new approaches based on maximizing the effectiveness of the limited resources available for legal aid. The consumption and affordability of legal services need to be monitored to inform a well-targeted legal welfare policy.

Judicial Sector

Legal and Institutional Framework

Slovakia's legal framework and institutions have been influenced both by the laws of pre-World War II democratic Czechoslovakia (1918–1939) and by the Soviet-type legal system of socialist Czechoslovakia (1948–1990). Most recently, Slovakia's legal and institutional framework has been shaped by new legislation produced during a period of profound change that included a transition toward a market economy and the redevelopment of a democratic state, in addition to the 1993 separation of the Slovak Republic from the Czech Republic (1991–2000).

The basic framework of the judiciary is laid out in the Constitution[4] and in the Law on Courts and Judges, the Law on the Judges and Lay Judges, the Law on Senior Court Clerks, and the Law on the Judicial Council.[5] Procedural law is found mainly in the Civil and Criminal Procedural Codes. This framework is complemented by a set of regulations issued by the government or the Ministry of Justice.

The Slovak judiciary consists of the courts and the Constitutional Court. Among the courts, only the Supreme Court is administratively independent. The Constitutional Court and the other courts are administratively supported and overseen by the MOJ and the regional and central Judicial Councils.[6]

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[4] Law 460/9,2 including amendments 244/1998, 9/1999, and 90/2001.

[5] Law on Courts and Judges 335/1991, amended by laws 264/1992, 12/1993, 307/1995, and 328/1996; Law on Judges and Lay Judges 385/2000; Law on Senior Court Clerks of 2002; and Law on Judicial Council 185/2002.

[6] The MOJ and the Judicial Councils are described in the section on the management of the court system.

Table 1. Allocation of Court Management Functions by Institution

President	Human resources management	• Appointing/dismissing judges • Appointing the President and Vice Presidents of the Supreme Court • Appointing three members of the Council of Judges • Appointing the Minister of Justice
	Policymaking/legislative framework	• Signing/vetoing laws
Parliament	Policymaking/legislative framework	• Drafting and passing laws
	Budgeting/finance	• Passing the annual budget, including allocations for the MOJ (such as the court budget)
	Oversight	• Overseeing the Executive Branch
Executive (Ministry of Justice)	Policymaking/legislative framework	• Drafting and adopting justice sector policy • Drafting legislation pertaining to the justice sector
	Budgeting/finance	• Formulating the budget for courts other than the Supreme Court • Disbursing budgetary funds to the Supreme Court and regional courts • Managing court finances for courts other than the Supreme Court
	Human resources management	• Appointing the court presidents and vice presidents • Nominating judicial apprentices and assigning them to courts • Managing training for judges and all other court staff • Setting quotas for judges and court staff • Codesigning (with the Council of Judges) a regulatory framework for human resources management as part of its policy/legislative drafting responsibilities
	Facilities management	• Managing court facilities/equipment
	Information management	• Providing legal information to courts • Managing court statistics
Council of Judges of the Slovak Republic	Human resources management	• Nominating judges • Assigning judges to courts • Promoting judges to higher courts
	Budgeting/finance	• Commenting on budget development and administration
	Policymaking/legislative framework	• Commenting on major policy proposals • Codesigning a regulatory framework for human resources management, including selection, promotion, discipline, education, and training
Supreme Court	Budgeting/finance	• Drafting its own budget
	Human resources management	• Participating in the assignment of judges to courts

The courts are, at least formally, separated from other branches of government and are independent. The independence of the judiciary is embodied in the legal system through the principle of legality, a set of incompatibilities, the immunity of judges, and the right of judges to challenge the constitutionality of laws and regulations.[7]

Court Structure

Constitutional Court

The Constitutional Court is a judicial institution separate from the rest of the courts. Created in 1992, it is located in Košice.[8] Its jurisdiction includes ensuring the constitutionality of laws, reviewing the internal consistency of the legal framework,[9] and interpreting the Constitution and constitutional laws.[10] In addition, the Constitutional Court acts as an electoral court; that is, it is authorized to make decisions in matters related to the impeachment of the President, referenda, people's petitions, the dissolution of political parties and movements, and conflicts between central administrative agencies over issues of authority.

The Courts

The Law on Courts and Judges provides for three tiers of courts in Slovakia: the Supreme Court, the regional courts, and the district courts. The 1990 reforms resulted in a judiciary capable of adjudicating not only criminal cases and disputes between individuals, but also commercial disputes and disputes involving the state. At present, the jurisdiction of the courts includes criminal, civil, commercial, and administrative matters.[11]

The Supreme Court and regional courts have both original and appellate jurisdictions. The original jurisdiction of the Supreme Court includes judicial review of administrative decisions issued by central authorities or by agencies with national jurisdiction. The Supreme

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[7] The Constitution provides immunity for the judges of the Constitutional Court, while the Law on Courts and Judges provides immunity for all other judges. While judges have the right to review law, they do not have the right to initiate/create law.

[8] Provisions in previous constitutions provided for a Constitutional Court, but these provisions have never materialized.

[9] The legal hierarchy in Slovakia includes the Constitution and constitutional laws, laws and international treaties, decrees of the federal government, decrees of the ministries, and decrees of the regional and local governments.

[10] The interpretation of the Constitution and constitutional laws is carried out upon requests from members of the National Assembly, the President, the Cabinet, the courts, and the Prosecutor General.

[11] Prior to 1992, the courts adjudicated only civil and criminal matters. A special administrative body known as the State Arbitrazh resolved all commercial disputes. The underlying objective of this body was to secure the fulfillment of the state's economic development plans. Consequently, the process and instruments used by the State Arbitrazh were very different from those used by the courts. In 1992, Slovakia integrated the system of the State Arbitrazh into the court system. At the same time, judicial oversight of the Executive Branch was reinstituted, and jurisdiction was broadened to include oversight of administrative decisions.

Court is also a regular appellate court for the regional courts and serves as the highest, extraordinary court of appeal. Finally, the Supreme Court issues legal opinions to secure the uniform and consistent application of the law in the country. The original jurisdiction of the regional courts includes judicial review of administrative decisions issued by regional and local authorities, serious crimes, commercial cases, and specific civil cases. The regional court is also the court of appeal for all decisions of the district courts. District courts only have original jurisdiction.

Currently, Slovakia has 1 Supreme Court, 8 regional courts, and 55 district courts. Eight of the district courts (one per region) function as company registers. The three regional courts of Bratislava, Banská Bystrica, and Košice function as bankruptcy courts.

Geographically, the courts' jurisdiction is consistent with the administrative map from 1996, and the courts are located in the administrative centers of districts and regions as they were defined by the 1996 administrative reform. The 1996 reform also increased the number of courts as a result of the government's efforts to ensure the judicial map's consistency with the administrative map.

In 2001, Slovakia carried out another administrative reform and increased the number of sub-regions to 79. This time, though, the judiciary was not included in the reform, and the number of judicial districts remained unchanged. Later, in the beginning of 2002, the MOJ initiated a reform of the judicial map aimed at reducing the number of courts. At that time, there was not enough political will to act on this sensitive issue as administrative reform proved extremely politically charged and controversial. For these reasons, the proposals prepared by the MOJ were never seriously discussed.

The Slovak courts consist of a president, vice president(s), judges and lay judges, and judicial apprentices and support staff, including senior judicial clerks. The judges of the Supreme Court are divided among four chambers (*kolegia*) – criminal, civil, commercial, and administrative – according to the judge's field of specialty. Each *kolegium* has a chairman elected by judges. The main purpose of the *kolegium* is to share information and subsequently formulate legal opinions to guide the interpretation of laws in the *kolegium's* field of specialty. The regional and district courts are also divided internally according to specific divisions, usually criminal, civil, and commercial. Court offices, which aid the work of chambers and divisions within the courts, may organize their assistance in two different ways: by providing support to specific trials or providing support to the entire court. The internal organization of the courts is not uniform and is determined at the discretion of the president of the court.

Decisions in cases are made through trials with three or more judges, or through a single judge (mostly at the first-instance courts). Depending on the court level and type of case, trials are constituted either by one judge and two lay judges, two judges and three lay judges, or three judges. A panel of five Supreme Court judges rules on extraordinary appeals

of the Supreme Court's decisions. In the near future, a newly established group of senior judicial clerks will take up authority to decide simpler, mostly procedural, matters.

The large number of courts in Slovakia generates a system that is overstaffed by judges. The overall number of judges in Slovakia is 1,257, of which about 777 sit in the district courts, 390 in the regional courts, and 90 in the Supreme Court.[12] The judges-to-100,000-population ratio is 23. This figure is greater than that in most other countries with well-functioning judiciaries. In the present organization of the courts, there appears to be no correlation between the number of courts and cases, or the number of courts and the population.

On the whole, the Slovak judicial map appears to be a fragmented judicial system that produces specific negative consequences. First, the map creates too many courts that are too small and too costly to manage. Second, the small courts produced under the system do not provide for the specialization of judges; this increases the risk that a judge will be captured by local interests that will negatively affect the quality of his court decisions. On the other hand, a larger number of courts spread over the country provides greater access to people. Access vs. efficiency must be adequately addressed.

Judicial Governance

The key challenges in Slovak judicial governance appear to be the fragmentation of and disconnects between the many elements of the management framework. When court management functions are assigned to more than one institution, the coordination of management activities becomes an issue, because each of the institutions involved can, potentially, undermine the others' efforts. The coordinating institution faces the challenge of obtaining the necessary cooperation from other institutions, over which it may only have limited influence. In addition, these other institutions may have inadequate incentives, capacity, and resources to perform efficiently and effectively, which makes such cooperation even more difficult. In such a situation, then, the entire system can evade accountability for its performance. Excessive fragmentation can manifest itself in (a) management capacity[13] that is spread so thinly among different institutions that courts cannot perform up to necessary standards, and (b) lines of accountability that are so convoluted that no single institution can be held accountable for the performance of the judiciary.

The MOJ or the Cabinet, the Council of Judges of the Slovak Republic, and the Supreme Court all manage the courts in some capacity. In addition, the President and the Parliament

[12] The district courts have, on average, 14 judges, while regional courts have 49. The smallest district courts have, on average, 5–6 judges. The judges-to-100,000-population ratio (in Slovakia) is 23. As a comparison, France has 8.45; Germany, 4.46; Brazil, 2.86; and Singapore, 0.64. This indicator, based on 1999 statistics, is relative and varies depending on the methodology employed.

[13] Management capacity is defined as skills, information, organizational infrastructure, and other resources required for exercising management functions.

play vital roles in court administration. The number of institutions involved in judicial management in Slovakia is quite high (details displayed in Table 1). The question arises whether such a complex management structure can successfully implement the much needed reform measures in the justice sector. The Slovak example also begs the question whether a different, simpler structure would execute management responsibilities more effectively and efficiently.

In order to overcome the excessive fragmentation of the court management system, the government should review the current court administration structure and optimize the allocation of court management responsibilities. In addition, because the Slovak court management system suffers from problems of both management capacity and accountability, the government should consider appropriate measures to consolidate the system.

Optimizing the allocation of functions and institutional structure of the court system is likely to result in the consolidation of management functions in fewer institutions – such an optimization exercise would need to rely on techniques of functional and efficiency review.[14] In general, there are a variety of ways in which the interaction between the government and justice sector institutions can be set up.

Without prejudging the outcomes of the process described above, two tentative recommendations can be made. First, the Judicial Council could be more effective as an advisory body than as a body with management functions. The Judicial Council would be able to amplify better the voices of judges if its mandate were altered; its management responsibilities are too broad for an organization currently staffed with individuals employed full-time elsewhere. Second, Parliament's capacity to appoint judges through a transparent and contestable process is inherently superior to the current system whereby the President often delegates this function to the unelected officials of the office.[15] This recommendation is based on the fact that the impact of the President's authority to appoint judges, a responsibility recently ceded by Parliament, is uncertain because the criteria and procedures for making such decisions have not yet been developed.

Supreme Court

The management of the Supreme Court differs from the management of the other courts in Slovakia. The Supreme Court has the authority to draft and administer its own budget and to participate in the assignment of judges to courts.

The Supreme Court could be a leader in the management of the court system. At this time, though, the Supreme Court plays almost no role in the administration of the courts. The

[14] A functional review is a process that evaluates consistency between the objectives of an organization and the structure and management of that organization.

[15] Moldova is an example of a country that delegated the appointment of judges to its president. The system is heavily criticized for the lack of transparency and for being a tool of political manipulation.

potential leadership of the Supreme Court in the management of the courts is undermined by its own compromised performance; rivalry with, and animosity toward, the MOJ; and tensions with lower-level courts that perceive that the Supreme Court is preoccupied only with its own well-being. Although the Supreme Court is an institution that, by design, could assume responsibility for management of the entire court system, this increased authority is highly unlikely owing to current political realities.

In justice sector reform, the Supreme Court should be treated as an integral part of the court system, and measures aimed at increasing its effectiveness and efficiency should be developed from the position of a unified and cohesive judiciary. Integrating the Supreme Court's budget chapter into a consolidated court budget could increase the effectiveness of resource allocation in the justice sector.

Judicial Councils

Judicial Councils are the most recent addition to the Slovak justice sector. In 1996, eight regional judicial councils, complemented by a central Judicial Council within the Supreme Court, were created to advise the president of the respective courts on management. The regional councils are involved with budgets, work schedules, evaluation of judges, career advancement, special awards, judicial appointments, selection of court presidents and vice presidents, selection of judges to preside on panels, and demotion and/or dismissal of judges. In 2001, a constitutional amendment upgraded the status of the central Judicial Council to a constitutional institution called the Council of Judges of the Slovak Republic (the Council). In April of 2002, the Law on the Council of Judges of the Slovak Republic finalized the design of this institution. The law designated the Council as an independent entity whose main purpose is to protect the rights and interests of judges.

The Council now has the authority to decide on the appointment of the members of the disciplinary tribunals and on the assignment of judges to particular courts. In addition, the Council has the power to: nominate, for presidential appointment, all new judges, as well as the President and Vice Presidents of the Supreme Court; promote judges to higher courts; comment on the courts' budget and policy proposals; and participate with the MOJ in the design of the framework for human resources management of court staff, including issues of selection, promotion, discipline, education, and training. The Council also now comments on justice sector policies and strategies and relevant laws and court budgets, and coordinates the activities of regional councils.

The regional councils are chaired by the presidents of the regional courts. The members of the councils, in turn, are appointed by court presidents or elected by judicial assemblies.[16] The Council of Judges of the Slovak Republic is chaired by the President of the Supreme Court.

[16] There are two types of judicial assemblies: the Supreme Court assembly, which is composed of Supreme Court judges only, and the regional assemblies, which consists of all judges in each region.

In addition to the Supreme Court President, the Council has 17 members. Eight members are judges, while the rest are well-respected lawyers selected in equal proportions by the President, the Cabinet and the Parliament. The term of service of the Council members is 5 years.

Although the Council's track record is relatively new to evaluate, its effectiveness can still be commented on due to its composition and over-ambitious set of responsibilities. Furthermore, because of broad responsibilities, the organizational effectiveness of the Council institution may be questioned because all its members are expected to perform their Council duties while also maintaining other full-time jobs. In addition, with the exception of some highly developed countries with stable justice sectors, there are relatively few positive experiences with these types of institutions in the world.[17] Although it would be reasonable to expect that such an institution might find its main focus in the performance of the judiciary, the actual mission of the Council is unclear.

The functions of judicial councils should be reviewed within the context of maximizing the effectiveness of judicial governance. Their role as protectors of the interests of judges should be carefully weighed against their role in managing the court system.

Ministry of Justice

According to the Law on Courts and Judges, the MOJ, which enjoys cabinet status, is directly responsible for administration of the judiciary. Apart from managing the courts, the MOJ is responsible for prison administration, supervision of the legal professions (attorneys, notaries, and bailiffs), and representation of the Slovak Republic in the European Commission.[18]

The responsibilities of the MOJ vis-à-vis courts are significant. The MOJ is responsible for drafting policies and legislative proposals related to the entire justice sector. Moreover, the MOJ assists in court administration through the appointment of court presidents and vice presidents; the establishment of employment limits for judges and other court staff; budgeting and finance; and the management of facilities, legal information, and court statistics. The responsibilities the MOJ shares with the Judicial Council include selection, career management, discipline, education, and training of judges. The organizational chart of the MOJ is attached to this report. More details are included in the Court Management section of this report.

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[17] One of the best described experiences with judicial councils concerns Latin America and points to serious systemic issues. "When councils were first introduced it was argued that they would protect the judiciary from politicization. Hence, their initial and most common function was the appointment system. More recently, several countries have extended to councils the administrative management of the courts….The councils have proven no more adept at their roles than whatever body they replaced, have frequently fought with the courts they were to serve, and have often been means for further political intervention…. The creation of a council has often diverted attention from the more immediate problems of modernizing administrative operation regardless of who oversees them." (Hammergren, Linn. 1998. *Institutional Strengthening and Justice Reform*. Washington D.C.: U.S. Agency for International Development)

[18] See also Judicial Governance.

The MOJ is the key institution in the management of the court system despite the fact that no law delegates accountability for court performance to the MOJ. The MOJ's ineffective and inefficient management is viewed as one of the major reasons for the court's underperformance. In addition, some argue that the judiciary will become independent only if it is not managed by the Executive Branch.

However, divesting the MOJ of court administration functions does not appear to be feasible, at least not in the short to medium term, because other institutions (that is, the Supreme Court and the Council of Judges) do not currently possess the capacity to inherit these functions. In addition, as experience from such countries as Germany, Austria, and France indicates, placing the MOJ in charge of court administration is, in principle, not inconsistent with preserving judicial impartiality. Nonetheless, if the MOJ is confirmed politically as the institution accountable for court performance, it will have to use the management tools at its disposal with much greater efficiency to deliver results.

The preservation of judicial impartiality in Slovakia remains an important consideration in the allocation of court management functions, because there are qualitative differences in how the MOJ carries out its court administration functions compared with the justice departments of Western Europe. Management decisions are often arbitrary and politically motivated; they often lack empirical and technical expertise. As an example, the MOJ's authority over human resources, especially the appointment of the court presidents and vice presidents, will continue to thwart the extent to which Slovak judges enjoy institutional and personal independence.

In order to convert the MOJ into a more effective court manager, the government must restructure and strengthen the MOJ's management capacity. At present, these functions are fragmented and scattered. The units responsible for civil and criminal law, which effectively control court policy, and those units in charge of the management of specific resources (that is, finance, information, and personnel) have responsibilities well beyond mere court administration.[19] The first level at which all court administration functions are integrated is the minister's office. As a priority measure, the MOJ should establish a unit for court policy and administration, to allow for greater coherency in policy.

The unit responsible for court policy and administration must be equipped to deal with the highly complex issues of court policy and administration in a manner that promotes effectiveness and efficiency and protects judicial impartiality. However, there is a limit to what the creation of such a group can achieve, especially without a comprehensive strengthening of the MOJ and broader justice sector reform that addresses the issues of a regulatory impact assessment and the market for legal services. Priorities for the overall MOJ strengthening should include the collection of court statistics, external coordination, and policy drafting with stakeholder involvement.

[19] The human resource department, for example, is responsible for regulating the legal profession and appointing notaries and bailiffs.

The effectiveness of the MOJ policy proposals will depend greatly on the extent of the judges' ownership of such reforms. Therefore, the plans to improve capacity for communication and stakeholder involvement will be critical.

Improvement in court management will require a system of professional court administrators who, though not judges themselves, will closely collaborate with the judges. This new system will allow the MOJ to give up its controversial authority to appoint sitting judges as court presidents and vice presidents; instead, the MOJ will supervise court administrators who have no direct involvement in case adjudication.[20]

President and the Parliament

The President of the Slovak Republic is the head of state and a member of the Executive Branch. Through a recent constitutional amendment, the President acquired extensive authority over the management of the judiciary. The President is now responsible for appointing and dismissing judges and for appointing the presidents and vice presidents of the Supreme Court, four members of the Judicial Council, the Minister of Justice, and the Prosecutor General. In addition, the President has veto power over the enactment of legislation and appoints all members to the Constitutional Court.

The Parliament has the authority to enact laws, approve major reform programs, approve the budget, and oversee the Executive Branch. Moreover, Parliament has the power to oversee and reform institutions involved in judicial management and to approve the allocation of public resources to the court system.

The President was vested with the power of judicial appointment as a measure to increase judicial independence. However, the lack of transparent processes and the unlimited discretionary power of the President can be argued to undermine the effectiveness of this system and the credibility of its results.

To overcome the deficiencies of the present system, transparent selection procedures with merit-based principles should be developed and stipulated in law. For example, provisions for challenging the President's appointments should be considered. All institutions involved in judicial appointment should develop adequate capacity to follow these selection procedures.

Although involvement of the President in judicial appointments does not preclude effective judicial selection if the process is sufficiently transparent and competitive, the restoration of Parliament's involvement in the appointment of judges appears to have certain advantages. The restoration of judicial appointment by Parliament would increase opportunities to question and challenge the appointment process. The judges would depend

[20] This new system of professional court administrators is described in more detail in the section on Court Management.

on elected and personally accountable parliamentarians; although political considerations would be a factor in judicial appointments, the highly contestable nature of parliamentary activities would ensure that a candidate be thoroughly examined. Those who do not meet the statutory requirements would be disqualified.

Management of Judges

Integration of the various aspects of Human Resources Management (HRM) is a key challenge that the Slovak justice sector faces. In addition, each element of HRM struggles with its own problems. For instance, the employment structure of the Slovak court system is characterized by one of the highest per capita number of judges in the world and a very low support staff-to-judge ratio. The apprenticeship program lacks transparency in the selection of candidates and suffers from the weakness of the overall program's management as well as its theoretical training component. The selection of judges suffers from the excessive discretion exercised by the Council of Judges and the President associated with the lack of transparent selection criteria and procedures. Users of the court system, and court professionals themselves admit that court performance is undermined by the inadequate skills of judges and other court staff. The system for judicial promotion is not transparent. The critically important system of performance management is still evolving. The system of judicial discipline appears ineffective when considered against the perceived magnitude of corruption and underperformance in the Slovak judiciary.

In order to ensure that judges are sufficiently qualified and have adequate performance incentives, the HRM system should be comprehensive and well coordinated. An integrated HRM system should be able to address effectively the challenges described below in raising the effectiveness and efficiency of judges and court staff.

Increasing the effectiveness of HRM in the court system should become the highest priority of court reform efforts in the Slovak Republic as a means to weaken the perception of corruption. The main challenges in this area include strengthening meritocracy and improving professionalism.[21] Both require enhancing the institutional capacity for developing and implementing an integrated HRM system that would encompass all categories of court professionals. An integrated HRM system should become a central part of the court management system. In the short to medium term, the HRM will need to concentrate on strengthening the incentives and opportunities for sound performance. This should include raising the level of professional integrity, optimizing the structure/allocation of court employees, introducing a transparent merit-based selection system and effective system for monitoring and managing performance, and improving and intensifying training for the judges and court employees. Although the systemic changes represent a more strategic approach to reducing corruption, official measures against corrupt judges and court staff should still be taken.

[21] Meritocracy is defined as a system in which advancement is based on individual ability or achievement. See http://dictionary.reference.com/search?q=meritocracy.

Selection

In order to become a judge in Slovakia, one must satisfy specific criteria, including having Slovak nationality, suitable ethics, legal competence as verified by a law degree from a Slovak university, three years of apprenticeship, and passing a special examination.[22] The minimum age for judges is 30. In practical terms, the most important prerequisite is the apprenticeship.

In Slovakia, the selection of judicial apprentices is the first step in the selection of judges. Passing an exam designed by the MOJ and administered by a regional court is a precondition for becoming a judicial apprentice.[23] The criteria and procedures for the selection of judicial apprentices are entirely at the MOJ's discretion. The MOJ also assigns newly selected apprentices to district courts.

Currently, the three-year judicial apprenticeship program, conducted at the district courts, consists mainly of "learning by doing" under the supervision of designated judges. These judges carry out their mentoring assignments with little support and have limited time, incentives, and specialized skills to provide adequate training to their apprentices. Although the program includes some structured training activities (that is, lectures and seminars in such subjects as law, psychology, sociology, ethics, and rhetoric), these activities are limited to just six to nine weeks during the entire program.[24] Spending three years of the program in one court, particularly a small one, may limit the apprentice's experience.

At the end of the program, apprentices take a final judicial exam organized by the MOJ.[25]As in the case of the entrance examination, the content of the exam, the criteria for passing, and the examination procedure are at the MOJ's discretion. The MOJ creates a special committee composed of well-known legal experts to examine the individual candidates. The candidates who fail are allowed to re-take the exam once, within six months.

The judicial apprenticeship program should be strengthened by stipulating the selection criteria and procedures in law, introducing standardized anonymous written entrance and final examinations, granting unsuccessful candidates an opportunity for appeal, professionalizing the program's management, and strengthening the program's theoretical component. This

[22] With few exceptions, candidates for judgeship are expected to have passed the final examination at the end of their judicial apprenticeship. However, passage of the bar, notary, and prosecutor examinations also qualifies candidates for judgeships.

[23] The MOJ creates selection committees that are headed by regional court presidents and that include representatives of the Judges Association, the Judicial Assembly, and the MOJ itself.

[24] "Education of Judges in the Slovak Republic." Report SR/98 IB/JH 06/01.

[25] Passing the final examination at the end of the apprenticeship program is not the only mandatory qualification acceptable for judicial appointment. Those who have passed a bar, a notary, or a prosecutorial examination also qualify for judicial appointment, even though this avenue is rarely used.

transparent approach would help the government avoid the perception that such programs can be manipulated.

Appointment

Slovak judges are nominated by the Judicial Council and appointed by the President for life, without a probation period.[26] Previously, judges were nominated by the Cabinet and then appointed by the Parliament, initially for periods of four years. Judges then had to be re-nominated and reappointed for life. Both the Judicial Council and the President enjoy discretion in interpreting and applying the legal requirements for the appointment of judges.

Empowering the Judicial Council with the authority to nominate all judges has increased the credibility of the appointment process and has reduced room for its manipulation. Still, though, vesting the Judicial Council with the authority to nominate judges generates some problems. First, the institutional capacity of the Judicial Council, which is staffed with 17 members, is limited. Second, the arrangements for institutional accountability of the Judicial Council are not clear.

The transfer of authority with regards to the power to appoint judges to the President is even more controversial. The President's authorities in this area are broad and not balanced with adequate capacity or arrangements for transparency, including detailed rules and procedures. Furthermore, there is no requirement to provide justification for the decisions made. This makes it difficult, if not impossible, to comprehend and subsequently challenge the President's appointment decisions. When Parliament had the prerogative to appoint judges under the old judicial selection system, the appointment process was criticized for delays and politicization. However, under that system, the judges were selected in a more transparent manner, because those in Parliament could challenge each other in an open debate.

To combat these problems with transparency, the government should continue to enhance the transparency of judicial appointment. The government could spell out the details of the selection criteria and procedures in the law. The government should also consider reinstating certain elements of a probation period to strengthen the ability of the judicial system to prevent unethical or incompetent judges from being appointed for life. At the end of the probation period, those judges with clean service records could be appointed for life automatically.

Promotion

Both the Council of Judges of the Slovak Republic and the MOJ have authority over the promotion of judges, depending on the type of promotion. While the Council promotes

[26] The Judicial Council is responsible for a large number of HRM functions, including assigning judges to courts, promoting judges to higher courts, commenting on major policy proposals and budgets, and providing input in the HRM regulatory framework.

judges to higher courts, the MOJ promotes judges to positions of court vice president and court president, with the exception of president and vice president of the Supreme Court. The promotion of judges to heads of panels or to higher-instance courts is decided by the Council of Judges in consultation with the presidents of the courts. Last year, the mandatory advertisement of all judicial vacancies was introduced.

There are no transparent criteria nor professional competence requirements for promotions. Ministers of Justice regularly have used their power to appoint and remove court presidents. Except for the 1998 appointments, when the minister accepted the proposals of the Judicial Council and consulted the Judicial Association on the nominees, all of the personnel changes were decisions of a single person. Given the fact that career advancement in the judiciary is relatively limited and therefore important, the appointment and removal of the presidents became one of the most powerful tools through which the Executive Branch influenced the judiciary during this period.[27]

To increase the transparency and effectiveness of the promotion procedures, clear criteria and selection procedures for all positions should be developed. There should be an opportunity for those who believe that they were not selected because procedures were not followed. Moreover, the MOJ's authority in appointing court presidents and vice presidents should be revisited.

Discipline

Ethical standards for the judicial profession are not defined in the law. The law refers only generally to an ethical code approved by the Association of Slovak Judges. However, judicial membership in this organization is voluntary. The Association of Slovak Judges even competes with another judges' association, the Union of Slovak Judges, for members. The question arises as to whether the code of ethics can be applied to nonmembers of the Association of Slovak Judges.

A disciplinary offense is defined as the deliberate non-fulfillment or infringement of a judge's duties that creates justified doubts about that judge's independence, conscientiousness, and objectivity in giving judgment; impartiality in regard to participants in proceedings; or efforts to end court proceedings fairly and without undue delays.[28]

Until recently, disciplinary proceedings against judges could be initiated by the MOJ (14 cases in 2000) or by the presidents of the Slovak courts (57 cases in 2002). The regional boards or the Supreme Court then acted as disciplinary panels. Today, the Judicial Council elects the five members of each disciplinary panel from the candidates proposed by the

[27] Anecdotally, one court president was appointed and removed three times because of the political forces that gained/held power at the time.
[28] Act No. 385/2000 on Judges and Lay Judges, Section 116.

regional judicial councils. Only Supreme Court judges can compose the seven-member appellate disciplinary court. The Constitutional Court is the disciplinary authority for the President and Vice President of the Supreme Court.

According to the MOJ's Human Resources Management and Career Development unit, over the eight-year period from 1992 to 1999, 71 disciplinary and criminal proceedings were initiated against judges. Fewer than half of these proceedings resulted in sanction. The most common sanction included a reprimand and a salary cut. Three judges received prison sentences. Although the President and, previously, Parliament, could remove judges convicted of crimes or recognized for unsatisfactory performance, no such disciplinary actions were reported.

In Slovakia, the state is liable for any damages sustained in connection with a judge's wrongful conduct in the performance of his or her duties. The state, represented by the MOJ, may then seek recourse against the judge whose action caused damage. For their own protection, judges contract personal insurance coverage. To date, however, no such liability case against the state or a judge has been reported.[29]

In Slovakia, judges have little concern for the consequences of their misconduct. One major issue is the lack of codified rules on the ethics and conduct of judges. The system for disciplining judges appears ineffective when reviewed against the perceived magnitude of corruption and underperformance in the Slovak judiciary. Also, it is rare in any country to sue a judge or state for damages related to wrongful decisions.

The government needs to pay greater attention to issues of judicial ethics and conduct. Because judicial corruption most seriously affects the performance and perception of the courts, the government must develop a special anticorruption strategy. This strategy should rely on systemic improvements, resulting in strengthened incentives for ethical conduct and reduced opportunities for corrupt actions. However, disciplinary measures may still play an important role in deterring judicial abuse of public office for private gain. A small judicial inspectorate can be created to investigate corruption allegations and to carry out random spot checks. Laws will stipulate the inspectorate's objectives and authority.[30]

The following two measures could increase the effectiveness of the proposed strategy concerning management of judicial performance. First, the launch of the inspectorate's activities should coincide with the amnesty of those judges who committed acts of corruption in the past. This would ensure that judges are less vulnerable to blackmail associated with

[29] Open Society Institute, "Judicial Independence in Slovakia."

[30] The judicial inspectorate could employ two to three incorruptible inspectors and a few support staff. The inspectors would conduct investigations together and report their findings to a designated body (the Supreme Court or the Parliament). The inspectors would limit the scope of their investigations to judges, but would report other implicated individuals (that is, lawyers, court administrative staff, and prosecutors). The proceedings following the investigations should be public.

their past actions. Second, the inspectorate may need to start with smaller and easier cases, leaving more difficult cases, usually concentrated in the capital, for the future.

Judicial Education and Training

The MOJ is responsible for the continuing education of judges.[31] There is a special four-year training program for newly appointed judges. This program is customized, depending on the judge's specialization in civil, criminal, or commercial law. It amounts to about 200 hours of seminars. All other judges participate in occasional seminars organized by the MOJ and its Institute for Education, the Association of Judges, and regional courts.[32]

The continuing education activities are largely supply-driven. The providers determine the content and timing of the training activities. Training events take place during the regular working hours, and attendance, which has no bearing on the judges' workload, is voluntary. Fifty to sixty percent of judges have participated in training sessions.[33] Anecdotal evidence shows that the quality of training, including the selection of topics, the appropriateness of the training methods, and the actual delivery, is uneven.

Users of the court system and court professionals themselves admit that court performance suffers greatly from the inadequate skills of judges and other court staff. The skills gaps exist in both substantive law and the ability to apply law in areas such as critical reasoning, legal research, communication, management of the adjudication process, and use of modern communication and information technology. The skills gaps are particularly evident in commercial cases, in those cases with an international component, and in the entire spectrum of issues related to operating within the EU legal environment.

Courts have to adjust to the dynamic transformation of their operating environment, which was begun under the explosion in commercial cases and is now accelerating with accession to the EU. These changes include major shifts in the behavior of individuals and firms, the continuing and large-scale modernization of the legal framework, and drastic institutional changes. All of these transformations have direct and far-reaching implications for the skills that court professionals must have in order to administer justice. For the purposes of developing judicial skills and then maintaining these skills at an appropriate level, the government should make a major investment in its judicial training system. The training should become continual, demand-driven, and cost-effective.

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[31] Law 335/92 defines the objective of continuing education: improving the knowledge of judges.

[32] Aspects of the training system for judges and support staff are described in the 1995 Ordinance 33381/1995-30, Education and Training System for Judges and Other Court Personnel of the Ministry of Justice of the Slovak Republic, Bratislava, July 1995.

[33] PHARE, "Education of Judges in the Slovak Republic." The real number of judges trained is lower because a number of judges attend two or more seminars.

The only sustainable solution for ensuring that judges and other court professionals develop and maintain the necessary skills is to develop an effective training system supported by an adequate infrastructure. Continuing education should become an integral part of professional development as well as HRM and should be managed by training professionals. Although it is important that a broad range of stakeholders, such as training professionals, contribute to the training strategy, training providers should not be responsible for formulating training needs. When resources are limited, it is tempting to reduce training expenses. However, skills development of court professionals is critical for improving the quality of the courts. The training system could be described in law so as to create the procedures for identifying training needs, planning and budgeting the training activities, engaging training providers, and control the quality of the training activities which would ensure that the training system work effectively.

In setting the institutional parameters of the judicial training system, it is helpful to consider the following factors: (a) training is an integral part of human resources management and should be managed as such; (b) the training strategy should anticipate changes in the regulatory, economic, and social environment that make the input of those who shape this environment critical for the quality of its effectiveness; (c) periodic performance evaluation of court professionals should result in the collaborative formulation of individual training priorities by court professionals and their managers; and (d) training management is a highly complicated activity that requires special qualifications.

In the Slovak environment, the development of training management capacity is within the MOJ. However, the courts and judicial organizations should have the right and the obligation to provide substantive input in developing and monitoring implementation of the training strategy.

Approaching training as an integral component of human resource management implies, among other things, strengthening the incentives for court professionals in developing and maintaining their skills. Competence should be encouraged by recognition and promotion to positions of greater responsibility. On the other hand, sanctions may need to be applied to those judges who do not demonstrate a minimum level of competence. Measuring and recognizing competence can be greatly facilitated by developing transparent performance standards.

Performance Management of Judges

A system for judicial performance management, supported by adequate performance monitoring, is essential for improving the effectiveness and efficiency of the Slovak courts. The first, mostly unsuccessful attempt to introduce such a performance monitoring system exposed the complexities involved in addressing the central issue of performance. It demonstrated that it is extremely difficult, if not impossible, to single out one indicator as a comprehensive measure of the judges' collective or individual performance, and that a broad consensus of judicial stakeholders is essential for effective performance management.

In 2001, the MOJ attempted to introduce a system for monitoring judges' performance. Despite all the flaws of this exercise, the MOJ's intention to start monitoring the judges' performance deserves recognition. This particular system categorized court cases and, based on the complexity of the cases, assigned each category a certain number of points. A working group under the MOJ set a number of standards that the judges were supposed to accumulate. The judges that had the lowest scores in this monitoring exercise were supposed to be disciplined. In the end, facing fierce resistance from judges, the MOJ did not carry out any disciplinary actions.

This performance system, which eventually earned acceptance, originally suffered from misconceptions over its objectives and underlying methodology, which were exacerbated by the manner in which the system was introduced. In terms of objectives, although discipline is a necessary component, there are a number of reasons why performance management should not be equated with prosecuting poor performance. The main goal of performance management should be to improve performance.

Performance is influenced by a number of factors, many of which are systemic and outside an individual judge's control. Positive incentives can be reinforced by efficient operating procedures, access to adequate tools and resources, transparency, and professional competence. Moreover, implying that judges can be productive only under the threat of punishment discounts their professional ethos and can, by itself, jeopardize their independence.

As for the process, although the MOJ attempted to engage the judges in consultations on the proposed performance monitoring system, the judges complained that they were not provided with adequate opportunity to receive information and organize their feedback. Apparently, there was little continuity in which judges were invited to the discussions. As a result, it was difficult for the judges to form an educated opinion on the proposals and then subsequently comment on them.

The methodology used for categorizing court cases according to their complexity raises questions and lacks validity. The categorization was completed based on the opinion of the members of the working group and was not supported by any empirical research or broad endorsement by the judicial community. This further decreased the credibility of the system among the judges, who also complained that the system did not take into account judges' responsibilities other than the review of specific cases. In addition, the system did not address the trade-off between speed and quality.

Establishing an effective system for performance management will require transparent performance standards stipulated in law. Optimization of the set of performance indicators should be a continuing and participatory process, one that follows/tracks the priorities involved in the modernization of a particular judicial system. Performance monitoring should be conducted on various levels, from the judiciary as a whole at one level to individual judges

at another. Performance evaluation of individual judges should become routine and serve primarily as a tool for identifying opportunities for improving performance.

Remuneration of Judges

The average salary of judges is about US$760 per month, which is approximately three times higher than the average Slovak salary. It is comparable to the salaries of members of Parliament, prosecutors, and less prosperous private lawyers.[34] A new salary scale is expected to be introduced in early 2003 to address the salary differentials between young judges and more senior judges.

Until 2003, retired judges did not receive any special treatment. The difference between a judge's salary and pension was so great that senior judges were reluctant to leave the bench. For obvious reasons, this disparity most affected the work of the Supreme Court. Starting in 2003, however, retiring judges "will be entitled to a supplement to their old-age pension commensurate to their length of service, which may amount to as much as 150 percent of the basic pension (3.75 percent of the basic salary for each year with a maximum of 40 years of performance). Upon retirement, a judge is also entitled to a severance payment equal to 10-months' salary." The impact of this reform is still to be seen.[35]

From 2000 to 2003, judicial salaries were not adjusted for inflation as a cost-control measure. In addition, benefits have diminished over recent years. Before, judges' retirement benefits were so small that they often faced a drastic reduction in their income once they retired.[36] Another issue affecting judicial benefits is the absence of a policy that would deal with the housing of judges. This is one of the main disincentives that prevent judges from transferring to other courts, even when such transfers would be associated with a promotion.

Lessons learned from other nations show us that judges, to resist pressures from interest groups, should be adequately compensated. The government must intervene in this self-perpetuating cycle by correcting the image of judges, which appears to be worse than it should be, by ensuring that salaries are adequate. However, given that public opinion does not support increases in salaries and benefits for judges, the judiciary itself should address issues to improve performance, quality, and integrity.

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[34] Judges' salaries range from 70 to 130 percent of the salary payable to members of Parliament. The salary of a judge sitting at the Supreme Court is fixed at 130 percent of the salary of a member of Parliament. (Open Society Institute. 2001. "Judicial Independence in Slovakia." New York)

[35] Open Society Institute, "Judicial Independence in Slovakia."

[36] This may be one of the reasons some of the Supreme Court judges who reach retirement age continue to sit on the bench. As discussed in other sections of this report, the Supreme Court is overstaffed with judges when compared with Supreme Courts of other countries.

Court Performance

Improving the quality of court performance is one of the main objectives of justice sector reform. The primary problems with court performance in Slovakia include the poor quality of court performance and delays and the corruption that such delays foster. Problems extend to poor empirical data on the system and an excessive reliance on conventional wisdom to measure judicial performance. Although court fees are not excessive, the lawyers' fees associated with legal advice and representation are high relative to income and, together with lawyers' inadequate performance, impede broad-based access to the courts. It is noteworthy that performance of the courts is actually superior to the public's perception of that performance. Therefore the image could be improved trough well targeted public awareness campaign.

Court performance is difficult to evaluate from a methodological point of view for three distinct reasons. First, court performance is a result of a balancing act of quality, speed, and cost. Second, the output of court activity is an intangible, indivisible legal service, with significant externalities that cannot be easily measured against inputs (resources). Third, the "period of production" is hard to define in court proceedings because justice "produced" by court actions may be drawn out and diffused.[37] Despite these obstacles, this report attempts to assess the performance of the Slovak courts through the use of court statistics (whose accuracy, however, raises doubts), survey results[38], and expert assessments[39]. Our evaluation concentrates on such aspects of court performance as the quality of court decisions[40] and the speed and the costs of litigation. First, the evaluation

[37] The efficiency of the judiciary is determined by how quickly and consistently the court system provides legal services, including case adjudication. Standard efficiency measures include clearance rates (percentage of cases disposed within a given time), number of cases decided per judge, waiting time in cases, cases set down, number of writs issued, time between case filing and judgment, sitting hours of judges, internal efficiency of financial resources measured by cost per case processed, cost of salaries per case, total expenditure as a percentage of the national budget, and relative share of salaries and wages in total expenditure. The quality of dispute resolution is determined by the usefulness with which rights and obligations can be enforced and is measured by attributes of the "outputs," such as the equity and fairness of judicial decisions. Generally, opinion pools and surveys are used to assess users' perceptions of quality or overall confidence in the justice system (which, when broadly defined, includes such features as the independence of judges and the transparency of the system). Also, as a proxy of quantitative measures, some countries use "indirect" input measures of factors that can affect quality, such as pending cases or backlogs, level of total court fees (for example, filing fees, lawyer fees, and bailiff fees), judges per capita, lawyers per capita, expenditure per case in legal assistance programs, proportion of cases that result in appeals to higher courts, cases deleted from the rosters (for example, cases removed from the judicial process and the courts or business that do not require judicial decisions), and expenditure on the judicial sector as a share of the national budget (Malik Waleed and Roberto MacLean, *Commercial Judicial System in Egypt. Washington, D.C., World Bank*).

[38] We draw on the results of two surveys: the 1998 survey "The Slovak Judiciary in Public Eyes," sponsored by the Association of Slovak Judges, and the 2000 corruption survey conducted by the World Bank in cooperation with the U.S. Agency for International Development.

[39] We draw on the findings of the following experts' reports: "Education of Judges in the Slovak Republic" (EU PHARE Program 2001) and "Slovak Republic Administrative Barriers to Justice" (Foreign Investment Advisory Service 2000).

[40] A court decision is defined as one of high quality if the court decision is made in full accordance with the law.

focuses on public perception of court performance by judges, users, and the broader public. Then the focus turns to the actual efficiency and effectiveness of the courts.

Public Image

Many Slovak judges recognize that demands on the administration of justice drastically increased during the 1990s when justice sector reforms were implemented. Moreover, the judges point out that economic liberalization and political transformation made commercial and civil cases more numerous, complex, and interdependent. At the level of the Supreme Court, justices are concerned with the rapid growth in the number of administrative cases. In addition, judges believe that they are often victims of unwarranted pressures from the press and politicians. They maintain that the legal and institutional system, although far from perfect, provides them with little protection and security from these pressures.

Slovak judges tend to deny and underestimate the seriousness of the crisis within the justice sector as well as their contribution to it. Many judges blame the lawyers as the brokers of corruption within the courts and assign them at least some responsibility for the case backlog. Judges also believe that procedural rules assign excessive responsibilities to them in the litigation process and allow the lawyers to employ dilatory tactics and bring frivolous cases.

In addition to recognizing delays and case backlog, some in the legal community perceive the professionalism and competence of judges as declining over the last 10 years, especially those who specialize in commercial matters. Perhaps this is because of the relative novelty of the issues. Also, many commercial judges have been recruited from the State Arbitrazh, and, generally speaking, their old working habits do not allow them to fully appreciate the importance of procedural rules.

The legal community openly admits that, to process cases, "informal incentives" are needed for judges and court personnel. The community also indicates that as many as 80 percent of judges are corrupt and believes that judges' lack of personal accountability is the main reason for the insufficient productivity of the courts.

The 1998 survey "Slovak Judiciary through Public Eyes" revealed that only 12.9 percent of respondents believed that the judiciary at that time was more trustworthy than the judiciary before 1989, when it served the totalitarian regime. Forty percent of respondents did not see any difference between the judiciary before 1989 and in 1998. In fact, 20.8 percent of respondents believed that the judiciary before 1989 was more credible than in 1998. Fifty percent of the respondents believed that judges were corrupt. Only 21.9 percent believed that the judiciary was independent; 36.9 percent believed that it was politically influenced.

The 2000 corruption survey sponsored by the World Bank and USAID did not report more favorable results for the judiciary. Together, the judiciary and the health system were the

most corrupt sectors measured in terms of the frequency and average size of bribes.[41] The study concluded that corruption in the courts was widespread and, despite minor improvements since 1998, the level of corruption was higher than 10 years before.[42] Finally, the study suggested that corruption in the judiciary was associated with delays in service delivery.

The courts' performance rating was among the worst in the survey; that is, only one out of nine enterprises involved in court cases gave courts a positive assessment. The users of the court services perceived the slowness of the court proceedings as the most serious problem. Eighty-three percent of the enterprises suggested that the court proceedings in which they participated from 1998 to 1999 were not fast enough and that there were unnecessary delays. Eighty percent of the enterprises also indicated that slowness of the courts was one of the three most serious obstacles they face in business.

Many among the Slovak public are deeply concerned with the performance of their courts, even though they differ on what the problems are and who is to blame for these problems. The most commonly recognized issues of concern are court delays and judicial corruption. These are problems that the judges must begin to address.

Actual Performance

This section of the report demonstrates that the performance of the courts is actually better than what the public believes it to be. However, the deficiency of the official court statistics makes comparisons and analyses difficult. For instance, cases older than two years are counted in some official reports as two years old. Cases with international components, which are notoriously time-consuming, are not reflected in the official statistics at all. Moreover, statistics are maintained separately for the Supreme Court and the rest of the courts. Given the Supreme Court's excessively broad jurisdiction, a dual statistical system prevents the MOJ from following the time of disposition of a significant portion of the cases. Unfortunately, more accurate information is not available. This report, therefore, uses the official statistics as an input in its productivity analysis, but care has been taken not to use it as a basis for any definite conclusions.

[41] The bribes – averaging 25,000 SK (US$625) – exceeded twice the average bribe in other sectors.

[42] Thirty percent of enterprises interviewed felt that the courts were corrupt, and 19 percent reported bribery. About 25 percent of households involved in court trials gave "something special" to a court employee, judge, or attorney. The rate was the highest (32 percent) among those involved in civil cases such as divorces and property disputes, which are also the most common types of litigation. In more than half of the cases, the bribe was given in order to speed up litigation. In 17 percent of the cases, it was given with the intention of influencing the court's decision. Among the enterprises that were involved in litigation, those that considered the proceedings to be fast were 25 percent more likely to report that the court was corrupt than those who reported that the litigation was slow. The situation with the company registers, which is also handled by the courts, was no different. Among the companies that interacted with the registers, 15 percent reported paying a bribe. The median bribe was 6,000 SK (US$150).

Between 1990 and 1999, the Supreme Court's clearance rate decreased from almost 100 to 60 percent. That is quite unimpressive compared with other countries. In 1999, the case backlog, defined as the number of pending cases, reached 4,487 – an equivalent of the annual workload for five judges – compared with only 53 cases in 1990. Although no official data on the average time of case disposition by the Supreme Court could be found, the length of disposition of cases by the Supreme Court is excessive according to the interviewed judges, lawyers, and users of the Supreme Court's services.

The number of cases entering the Supreme Court rose dramatically during the 1990s. In 1990, the Supreme Court received 2,236 cases and disposed of 2,183. In 1999, these numbers increased to 11,231 and 6,744. Except for 1995 and 1998, when slight decreases of incoming cases were recorded, the increase in incoming cases averaged 924 per year. Between 1990 and 1999, the number of judges increased from 44 to 77 and then reached 90 in 2000. Between 1990 and 1999, the judges' productivity increased from 58 to 87.6 cases per year.

The Supreme Court's agenda is dominated by commercial and administrative cases. According to official court statistics, the Supreme Court processes the vast majority of all administrative cases brought before the courts.[43] Although the Supreme Court has exclusive authority over interpretation of law, the preponderance of commercial and administrative cases makes this activity a marginal item on its agenda. The latter cases require the most frequent interpretation.

In contrast to the Supreme Court, the ability of the regional and district courts to handle the inflow of cases remained relatively stable between 1990 and 1999. During this period, the clearance rate of district and regional courts combined fell, but only by 3 percent, from 75 to 72 percent. In 1999, the case backlog at the district and regional courts amounted to 168,547, 85 percent of which were at the district courts.

From 1990 to 1999, the number of incoming cases in the regional and district courts rose fourfold, from 166,404 to 620,605. It reached its peak in 1994, hitting 717,890, then started to decrease slowly. Between 1990 and 1999, the distribution of the caseload between the regional and district courts (measured as the number of both incoming and disposed cases) remained stable, with about 20 percent assigned to the regional courts and 80 percent to the district courts.

The regional courts' agenda is dominated by appeals against the decisions of the district courts in civil and commercial cases. This represents about 70 percent of disposed cases. Since 1998, bankruptcies have represented a significant portion of the cases in the three regional courts, which are designated to process such cases. In 1999, the number of pending cases reached 7,204.

[43] The Supreme Court's original jurisdiction includes all administrative cases involving the central administrative authorities and agencies with all-national jurisdiction.

Sixty percent of cases tried in the district courts are civil. The most numerous are those concerned with juveniles' rights, followed by petitions by the public transportation companies to collect fines for failure to pay fares, and by divorce cases. The situation was different in the eight company register courts, with 48,519 registrations pending in 1999; this number represents the backlog of 1998 registration cases and the addition of new cases in 1999.

If the official statistics are accurate, Slovak courts do at least as well as their international counterparts in terms of disposition time. The average disposition time of civil, commercial, and administrative cases is 11.1 months. Criminal cases average 11.3 months, comparable to figures for the Canadian province of Québec in 1994. The lengthiest, on average, are the commercial cases requiring application of the old socialist commercial law (45.1 months), followed by property rights disputes (15.3 months) and labor disputes (12.8 months). The cases concerned with the rights of juveniles are processed the most expediently, with an average of 6.5 months.

In 1990, 745 judges were employed; of these, 71.6 percent were working in the district courts and 28.4 in the regional courts. By 1999, the number of regional and district court judges combined increased to 1,167, of which 91.5 percent were in the district courts and 8.5 in the regional. In 1999, the productivity of the judges in the district and regional courts combined reached 387.4 cases per year, up from 162.9 cases per year in 1990.

Despite difficulties related to the measurement of court delays, surveys and anecdotal evidence strongly suggest that excessive delays exist. As for the distribution of delays in the system, first, the delays are distributed unevenly across the types of courts and cases. The Supreme Court's clearance rate,[44] for example, dropped much more than that of the district and regional courts. This may be explained by its excessive original and appellate jurisdiction. Second, litigants who do not pay bribes may have to wait much longer than those who do.[45]

Court congestion and the poor quality of court decisions seem to be the most visible problems within the Slovak judiciary. Delay has two implications: (a) because of inflation, the present value of net gained is reduced and consequently provides only partial protection, and (b) delays are incentives for wrongdoing parties to file lawsuits and avoid speedier systems that eventually lead to even heavier case loads. Delays cause poor service quality, foster corruption, reduce predictability of outcomes, and damage reliability of, and public confidence in, the judicial system and justice. Consequently, speedy resolution of cases and increased quality of court decisions and outcomes should be important social goals in Slovakia and priorities for its legal and judicial reform.

[44] Clearance rate is defined as the ratio between cases disposed and filed over a time period.

[45] This suggestion is consistent with the frequency of bribes reported in personal interviews and documented by corruption surveys.

Court Administration

Although new court functions and a rising number of cases have increased the demands and pressures on the courts, court management has changed little since the early 1990s. The MOJ delegates the day-to-day management of the courts to the court presidents, whose responsibilities combine those of a judge and a court official.

Court presidents lack the managerial skills that are necessary to compensate for small budgets, obsolete rules, inadequate premises, and lack of professional support. Moreover, while some could argue that the responsibility of court presidents enhances judicial independence, what court presidents gain in administrative authority they lose in their judicial authority, as they become de facto political appointees. Although the Judicial Council nominates court presidents, the appointment still rests with the Minister of Justice, a political figure.

Experience from across the world suggests that court performance strongly correlates with the quality of court administration. In Slovakia, however, the popular view is that, in order to improve court performance, judges need to work more diligently; consequently, court administration as a discipline is not well recognized. Although the role of judges in the administration of justice is unquestionable, this view underestimates the contribution that improved court administration can make to court performance.

The professionalization of court management through the institution of full-time court administrators and the standardization of court operating procedures are the key ingredients in improving the quality of court management. The court presidents should relinquish their responsibility for administrating the court infrastructure on a day-to-day basis and, instead, should concentrate on their role as judges. While court administrators would operate under the oversight of court presidents, they would rely on the MOJ for administrative resources.

Court administrators can manage the administrative agenda and suggest policy decisions. They can manage non-judicial court staff, including: expert and lay judges; court finances; budgeting and accounting; procurement; information, case flow, and records management; automation; and interagency coordination. Court administrators can be organized in a vertical structure, with the top court administrator at the agency responsible for court management, currently the MOJ. The proposed changes will not only improve court management, but will also reduce the opportunities for, and perceptions of, interference with judicial independence.

The introduction of structural changes in court management will be most effective if accompanied by a revised and modernized court operating procedures. Despite having undergone continual revisions, the court operational procedures still do not meet the requirements of modern justice administration. The procedural changes made so far have been random and piecemeal. For example, individual courts recently dealt with procedural

issues by introducing their own rules, which reflected their own unique priorities and capacity. While this bottom-up process could be helpful, it has further fragmented the court management system and undermined attempts to introduce system-wide improvements. Standardized rules are particularly important in case management.

The need for a systemic modernization of the court management is not inconsistent with achieving tangible improvements with relatively simple steps, for example, strengthening the filing system, redistributing the workload, and issuing written operational procedures. Such incremental changes are sometimes more important than automation. Automation without improvements in procedures has proven unsustainable in most cases, and often can be expensive to maintain.[46] A promising option for helping judges to concentrate on their core functions is the introduction of an institute of judicial clerks. These clerks are qualified lawyers who would assist judges with substantive issues. Strengthening the role of the judicial apprentices could also be considered.

Employment Structure

The Slovak courts employ judges, lay judges, recently introduced senior court clerks, support staff, and apprentices. Slovakia is among the 10 countries with the highest per capita number of judges in the world.[47] During the 1990s, the number of judges increased, though that rise was not proportional to the upsurge in the number of cases.

During the 1990s, a large number of experienced middle-aged judges moved to the private sector, leaving the courts in the hands of their less experienced colleagues. Before the recent increase in the minimum age for judicial appointment to 30, newly appointed judges could be as young as 25; often, these judges lacked relevant experience and maturity. The current shortage of experienced judges is exacerbated by the lack of a transparent and technical methodology for allocating judges.[48]

Lay judges contribute to the majority of court decisions. When lay judges are involved in a case, they outnumber the regular judges while enjoying the same voting power. Lay judges participate in fact finding and purely legal decisions in all types of cases. However, there are no education or training requirements for lay judges. Lay judges are elected for a fixed term, during which they are engaged on a case-by-case basis and are compensated with a small stipend. Retired judges maintain a disproportional representation among the lay judges, because they are more likely to be able to spend the necessary time in court. In

[46] Hammergren, *Institutional Strengthening and Justice Reform*.

[47] The reasons for such a high number of judges include the inquisitorial manner in which judges conduct the hearings, ineffective court management, and recent attempts by the government to resolve the case backlogs by hiring additional judges.

[48] Setting the number of court positions is at the discretion of the MOJ, which does so in a nontransparent manner and limits its consideration to the numerical increase or decrease in the number of filed cases and does not take into account other relevant factors (for example, the complexity of cases and judges' productivity).

the end, the Slovak judges usually have a group of "reliable" lay judges who are routinely involved in trials. The authority that regular judges enjoy vis-à-vis the lay judges reduces the independence of the latter.

As for the support staff, the international comparison of the support staff-to-judge ratio suggests that Slovak courts may not have enough support staff. The support staff-to-judge ratio in Slovakia is low: 2.6:1 as compared with 6:1 in Portugal, 5:1 in the Canadian province of Québec, and 4:1 to Belgium. The anticipated introduction of higher court clerks, empowered to assist judges by reducing the number of minor cases in courts, may further increase the need for additional support staff.

The majority of support staff have only a high school or secretarial school diploma. There are no formal paralegal education requirements for them to meet. Their salary levels – on average about US$200 a month – cannot compete with those of the private sector, and the resulting high turnover among the support staff, especially in big cities, negatively affects court performance. There has been an interesting attempt to improve the effectiveness of support staff by introducing specialization and by optimizing the allocation of tasks under the Banská Bystrica pilot project. The results can contribute to the development of the HRM strategy for the court system. At present, there is little information available on support staff, a fact that reflects the lack of attention they receive.

The court employment structure affects both the cost and the quality of justice administration. Under an optimal allocation of human resources, tasks are assigned to those personnel who can meet the performance standards at minimal cost.

The Slovak structure of court employment should be optimized in conjunction with the modernization of the case and court management system.[49] By identifying personnel roles and matching them with normal tasks carried out by the courts, the government can set benchmarks for activities and staff inputs. The number of support staff in relation to the number of judges should be evaluated to determine whether they should be increased. The roles of support staff should be carefully planned, as many can take on more responsibilities.

In addition, the role of lay judges should be re-evaluated. Lay judges, acting as the agents of the general public, can increase the transparency of the judicial proceedings and make judicial corruption more difficult. Lay judges can also improve the quality of court decisions when the judge has great discretion in applying social values or when a lay judge's expertise adds to the quality of decision-making. Nevertheless, a lay judge's lack of legal knowledge can impose additional transaction costs on court decision-making.

[49] Optimization can be best determined through a process often referred to as a functional and efficiency review.

Financial Management

This section reviews financial resources management within the Slovak court system. After describing briefly the courts' budget process, the section identifies the areas for improvement and recommends directions for reform.

Financial resources management has a direct impact on court performance, because it provides critical input to all stages of the policy cycle, including making strategic choices and designing programs, implementing programs, monitoring progress and evaluating results.

The public finance reform program launched by the government in 1999 provides a sound framework for the modernization of the financial resources management of the justice sector, including the court system.

In 1999, the government launched a public finance reform program. The program is aimed at: (a) achieving consistency between policy decisions and resources under a medium-term horizon (also known as the medium-term budgetary framework (MTBF)); (b) minimizing the scope of government operations outside the state budget; (c) introducing program budgeting that links expenditures to the results; (d) modernizing the legal framework for public resource management; and (e) creating the State Treasury and the Debt and Liquidity Management Agency. Within this framework, priority should be given to building capacity for implementation of a medium-term budgetary framework and for program budgeting within the judiciary itself.[50]

At present, the budget process is initiated at the level of regional courts.[51] These courts draft the budget proposals for themselves and the district courts.[52] The proposals are based on the previous year's budget and reflect the courts' own and the MOJ's assessment of financial needs for existing personnel and facilities. The expenditure categories are based on inputs; that is, labor and equipment are not explicitly linked to the results that these inputs are expected to produce. Few objective criteria exist for allocating human and material resources to the courts. The regional courts then submit their proposals to the MOJ, which integrates the courts' budget proposals into relevant expenditure categories within its consolidated budget proposal.

[50] The MOJ's contribution to the state budget amounts to 45–60 million SK (about US$900,000 – US$1,200,000). Court fees provide an additional 800 million SK (about US$16,000,000) of income. The total 2002 expenditures of the MOJ, the courts, and the Institute for Judicial Training amounted to about 2 billion SK (about $40,000,000). The MOJ often runs a deficit of between 4 to 13 million SK (about US$80,000,000 to US$260,000) (Ministry of Justice. 2002. *Budget of the Ministry of Justice, 2002; Three Years in Justice: 1998-2001*. Bratislavia).

[51] Over recent years, the MOJ's expenditures represented about 2 percent of the state budget.

[52] The Supreme Court has its own budget chapter, which it prepares itself. The government has been considering integrating the Supreme Court's budget chapter into a consolidated justice sector budget.

The key issues in financial resources management in the justice sector are many. First, the financial planning horizon is too short for what is required to design and carry out reform measures. In addition, policy objectives currently do not drive the budget process, which is oriented toward historical spending patterns rather than priorities for the future. Furthermore, policy development is not adequately based upon the budgetary implications of proposed actions. Finally, the current cash-based accounting system is incapable of providing complete and comprehensive financial information.

The weaknesses in the budget formulation result in the inconsistencies and shortages that appear at the implementation stage. For instance, the MOJ and the courts lack the capacity to anticipate and plan for contingent liabilities. As a consequence, their proposals are inadequate. At present, for example, the courts owe significant amounts of money to the lawyers that they employ for mandatory representation. Although the recent augmentation of the official lawyers' rates may certainly increase the MOJ's expenditures, this fact has not yet been reflected in the MOJ's budget proposal. Interestingly, the draft law submitted by the Cabinet to the Parliament argued that there is no need for a budgetary increase within the MOJ. However, the number of lawyers accepting assignments funded out of the court budget is likely to rise. This, in turn, may boost the total cost of lawyers' services by a factor that is greater than the rate by which the lawyers' official rates have increased. However, the courts lack the capacity to anticipate and plan for such contingent liabilities.

Introducing MTBF will greatly facilitate progress on the medium-and longer-term priorities of the justice sector and the court system. The present budgeting system suffers from its limited time horizon, which makes it difficult to design and implement modernization programs and even routine projects with a cycle of longer than a year. Under MTBF, medium-term targets for budget expenditures and revenues will be set, and the justice sector institutions covered by MTBF should be reasonably sure of their funding levels beyond the annual budget cycle.

Program budgeting is an advanced budgeting technique that makes it transparent not only where public resources are spent but also in what is being delivered and achieved with the budget. This information makes it easier to make educated strategic choices related to policy and resource allocation, and to keep the spending institutions accountable for the results of their activities. While program budgeting presents great technical challenges, including upgrading the underlying financial and information management systems, its persistent step-by-step introduction is critical in raising court effectiveness and efficiency.[53]

The court budget should be integrated into the overall justice sector budget. The court system, one of the institutions whose function is to further justice, does so chiefly through conflict resolution. Justice, however, can be achieved in different ways, for example, through preventing conflicts from occurring. Investments into raising the quality of the legal

[53] While the Constitutional Court is outside the scope of this report, it is worth noting that it was among the first four budgetary chapters that were presented in the program format in the 2002 budget, right after the functional classification of government operations in accordance with international standards was adopted.

framework; improving the delivery of non-court legal services; modernizing the systems of legal education; and improving access to legal information – all are competing strategies for achieving justice. Such policy trade-offs should be resolved transparently in the integrated justice sector policy and the budget that supports it.[54]

The government must also address financial management of the courts, which is impeded by an ineffective accounting system that operates on a cash basis. The current accounting system is not designed to trace accounts payable and accounts receivable or to reflect the depreciation of assets. The accounting statements, therefore, do not accurately reflect financial realities and can present an overoptimistic picture. Even before accrual accounting[55] is implemented, it may be possible to start generating data on accounts payable and receivables.

Case Management

This section reviews case management. It first reviews current case management practices, then presents the government's efforts to modernize the case management system. Case management is a process through which the courts carry out their court function. One can argue that all other aspects of court operation provide but a supporting infrastructure for case management.

In this section we define case management as systems and procedures for assigning cases to judges and for handling case-specific information within the procedural framework. A major aspect of case management is case flow management, which is a system for monitoring the flow of cases and taking corrective action as necessary. Case flow management facilitates the identification of problems in the system (such as delays), can measure court performance, and recognizes the most appropriate solutions.

Slovak courts process cases using written case materials which render the control and management of case files extremely challenging. The ultimate responsibility for case management lies with judges. Their task is formidable, from the time of the filing of a case until the judgment for that case in court. Clerks handle correspondence with all the parties and receive relevant documents. The law establishes time limits for each step of a case's processing, but these limits are neither monitored nor enforced. Enforcement of the deadlines for submission of documents or appearance in court is also weak.

There is little consistency in the forms that the Slovak courts currently use. The lack of common data elements and formats undermines the cohesion of the court information base. For instance, documents dealing with the same aspect of a procedure differ in form

[54] Integrating the court policy and budget into the justice sector policy is not incompatible with judicial independence. Existing and, if necessary, additional safeguards can be effectively used to prevent exerting undue influence on judges in the budget process.

[55] Accrual-basis accounting is the most commonly used accounting method. It reports income when earned and expenses when incurred, as opposed to cash-basis accounting, which reports income when received and expenses when paid. See http://www.investorwords.com/cgi-bin/getword.cgi?61

and content. There is also no single system for case identification, even though all courts use a similar numbering system, a combination of the year and a sequential number starting anew each year. Although each case has an independent file folder, the file often has no cover. Case folders are also routinely stacked on top each other, making the location and retrieval of cases difficult, if not impossible.

The Supreme Court and the lower courts face major problems in the registration of cases. Indeed, the records of case integrity are organized best in the Supreme Court. Cases are handwritten in a register and are also entered into an automated docket system application in a single computer. The system used in the Supreme Court, however, requires registering the same information twice – first on paper and then in the computer – and has a limited search capacity. The lower courts use different registers for the various types of actions and case events, and do not maintain summary records. This practice creates difficulties in tracking progress and can adversely affect cases.

Some courts try to compensate for this weakness in case management by recording case events on a folder's cover. This is a weak control device because a folder is portable, corruptible, and sometimes unavailable. In some systems, the clerk assigned to the case has to be consulted regarding the status and history of the case because there is no reliable register of court actions. Even where a registry of actions exists, its utility may be undermined by omitted or inaccurate entries that might lead to an erroneous action by a judge, attorney, or clerk. A more common problem is delay in entering events and filings. As a matter of good practice, court actions pertaining to the case should be reflected in the register within a day.

Issues with case recording and handling impede the management of case flow because the ability of court managers to identify priority issues in court operation and to allocate resources is undermined accordingly. As a result, many courts have a significant number of civil cases or mixed traffic cases where disposition takes an unreasonably long time.

Slovak courts have rules governing the storage and disposition of records. Little differentiation, however, is made between records depending on their type (that is, the nature of the case). Because the indiscriminate retention of files creates paper overflow in courts, the records retention and destruction rules should be revised so that, for example, the files of minor traffic cases are not maintained for as long as those of murder.

Reform of the Court in Banská Bystrica

The government has launched a major effort to modernize court case management and information technology. The reform began in 1999 in the Banská Bystrica district court. With the support of the Swiss Government, the Banská Bystrica district court piloted a new case management system aimed at improving work methods and optimizing procedures. The project addressed specifically case filing and monitoring, the printing of certified copies, and the disseminating of notices.

The project is considered one of the most successful case management reform projects in the region. For instance, within six months the receipt issuance time in the Banská Bystrica court dropped from 85.5 to 14.7 days for plaintiffs and from 65.4 to 16.8 days for defendants. In addition, both plaintiffs and defendants can now obtain computer-generated receipts within five minutes. Moreover, the average time between filings and first hearings declined from 73.2 to 27.5 days; the average number of steps for case processing diminished from 23.3 (or 5 per judge) to 5.5 (or 0.75 per judge; the average number of staff involved in a case decreased from five to four; and the case retrieval time shrank from 15 to 0.5 minutes.[56]

The pilot, which was limited to five judges and only civil cases, caught the attention of the government and donors. It is currently being replicated for use elsewhere in Slovakia. An automated case assignment system has been already installed in all Slovak courts. Preparatory work has been initiated to develop criminal and commercial case management systems. The process is being closely coordinated with the Judiciary Program financed by the EU.[57]

Although the reform of case management certainly deserves the praise it has received, its flaws also merit consideration. First, a widespread belief exists in Slovakia that automation of the courts' case management system will resolve all the courts' efficiency problems. As a result, little attention is paid to other related issues, such as resource management. Furthermore, the government, owing to its enthusiasm for the project, has oversimplified and underestimated the complexity of the case management system's massive rollout.

While the government rolls out the new case management system, it should simultaneously ensure that manual systems are rolled out to produce standardized acceptable services for the time being. In addition, the government should more carefully plan the elements of the new case management project and guarantee that every component is thoroughly detailed, funded, and properly sequenced.

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[56] See also Korb, Hans. 2002. "IT Modernization of the Court System in Slovakia." Unpublished Report. World Bank, Washington, D.C.

[57] Project SR9908.01 "Strengthening of Judiciary." The project aims to improve the technical capacity of district and regional courts, with the goal of more highly efficient court procedures. The core of the project is computerization of the courts. This project is a continuation of the EU's efforts in the courts. Since 1995, with the support of the EU, hardware and software have been implemented in eight registry courts, and software for courts dealing with commercial matters was developed and implemented at three bankruptcy courts. Other projects are aimed at a Legal Information System and implementation of a local network in courts. A supply of equipment will provide information technology for court administration. The total budget for the project is 4.8 million euro (US$5.1 million); PHARE's contribution is 4,200,000 euro (US$4,450,000), of which 1,199,000 euro (US$1,271,000) is allocated for hardware, 400,000 euro (US$424,000) for software and training, 1,500,000 euro (US$1,590,000) for the establishment of a communication network, and 300,000 euro (US$318,000) for equipment for registration courts (total equipment is 3,400,000 euro (US$3,604,000). The project should have been implemented in 2000, but it has been delayed.

Court Statistics and Legal Information

Reform of court management is impossible without improvements in court statistics. An effective statistics system promotes openness and accountability because it permits the judges, court managers, lawyers, policymakers, and users of judicial services to be aware of court use patterns and behavior. Court statistics can point to those areas that need additional resources and management improvements. Although the possibility of public oversight can be perceived as threatening to a court unaccustomed to it, collection and public dissemination of such statistics, nonetheless, are the best defense mechanisms the judiciary can use at times.

Unlike information pertaining to specific cases, court statistics supply aggregate data on the cases brought to courts and can illustrate court effectiveness and efficiency. Court statistics benefit both internal and external users – judges, court managers, lawyers, policymakers, users of court services, and the general public. Court statistics also create a precondition for internal and external accountability by detecting trends and exposing anomalies in court performance; they can substantiate judges' calls for additional resources and highlight the need for procedural changes.

In recent years, supported by EU funds, the MOJ has developed a centralized legal information database. The Legal Information System (LIS) seeks to facilitate the publication and distribution of "public" legal information (all laws including amendments and supplements enacted since 1945) to all interested parties. This system also includes all decisions of the Constitutional Court since 1993 and all Supreme Court decisions since 1965. The database, however, is available only to the MOJ and the Supreme Court (which reside in the same building), although there are plans to make it available to the courts – once they have computers – and the general public. When completed, the project will be able to satisfy the needs of judges for legal information.

Currently in Slovakia, court reports are the main source of data on court activities. Based upon the completion of each case, courts produce case-specific reports for the MOJ. Other reports are filed on quarterly, semiannual, and annual bases by each court region. When the MOJ receives data, they are entered in a database. The MOJ ultimately consolidates this information into a yearbook and circulates 200 copies to government agencies. The Supreme Court's statistics are generated separately and are not included in this yearbook.

The quality of Slovak court statistics is poor, and the circulation of these statistics is insufficient. The key reason for this deficiency is the lack of incentives to generate court statistics that are comprehensive, accurate, and relevant for decision-making. Insufficient analytical capacity and a lack of automation contribute to the problem. However, any capacity-building and automation projects will not be fully successful in bringing the quality of court statistics up to an appropriate level unless the quality of the statistics provided, as well as the incentive structure for their generation and users, is addressed.

The publicly available statistical reports are scarce, inaccurate, prepared over a long period, and structured in such a way that even legal professionals have problems interpreting them. The reports do not highlight trends or anomalies, which limits their value for court managers and policymakers. The exclusion of Supreme Court statistics makes it particularly difficult to understand trends and patterns in commercial and administrative cases for which the Supreme Court's authority is very broad.

Neither those who generate statistics nor those who use them within the court system currently have a strong interest in comprehensive and accurate statistics. Furthermore, statistics are not audited for their accuracy, and users of these statistics are not involved in the specification of information requirements. Additionally, judges consider filling out the case-related data-gathering forms an unpleasant, time-consuming formality and do not understand how they can benefit from information on other courts' performance. Lower-level courts do not want to submit data to superior courts that may negatively affect their reputation. Finally, court administrators are not eager to receive statistics indicating problems for which they can be held responsible.

When carrying out any comprehensive justice sector reform, the Slovak Government must place more emphasis on empirical evidence, including statistics. Now, in decision-making processes, court managers in Slovakia rely more on common sense and conventional wisdom. This tradition, in turn, translates into a lack of demand for, and an absence of, accurate and timely information in Slovak courts.

In order to create a successful statistical system that achieves all of the described goals, the MOJ should first work to expand the breadth of, and standardize, the judicial statistics it collects. It must ensure that case flow in Slovakia is recorded in a more comprehensive manner. This process would involve evaluating the specific problems within the judicial system and then, according to the system's needs, revising and refining codes or categories for types of cases and case outcomes accordingly. The government must also standardize the types of forms used in Slovak courts to collect these statistics, as standardization allows for easier comparative analysis of figures across courts.

The MOJ should also place more emphasis on analysis of court statistics. It should conduct evaluative studies of statistical data, including comparative analyses of courts within the Slovak Republic and within other countries.

Finally, the MOJ must place more emphasis on the publication and dissemination of these statistics and analyses. This is extremely important if Slovakia hopes to correct the public image of the courts by demonstrating that the courts are efficient, effective, and independent institutions. For example, the MOJ can use the Internet to promote the strengths of the judiciary, as well as for yearbooks and annual reports.

Access to Justice

Access to justice could be characterized as the ability of users to obtain justice through the legal system. Access to justice includes the use of court services and extends to other public and private mechanisms for dispute resolution and law enforcement. In Slovakia, access to justice is a right protected by the Constitution and, therefore, the state has a legal obligation to provide the arrangements necessary to the exercise of this right.

This section reviews economic barriers to Slovak court services. The report concentrates on economic barriers, since the geographic, psychological and information barriers appear to be less significant. Furthermore, the economic constraints discussed in this section are limited to court fees; legal services – paid as well as subsidized – are discussed in the second chapter of this report on legal services.

Geographical access to the courts is not an issue in Slovakia, as it is a relatively small country with a high density of population and a well-developed transportation network. The number of courts, which are all located in administrative centers, is sufficient, if not excessive.

As discussed previously, there is a high level of distrust of the judiciary among the population, so the psychological barriers to using the courts are likely to be significant. However, the impact of the psychological barriers on the usage patterns is difficult to assess without specialized studies.

Informational barriers also exist, but given the highly educated population with almost no illiteracy, these barriers are not likely to be as significant as the economic ones, except among the most vulnerable groups within the Slovak population, including the Roma.[58]

As a rule, court services are not free; those who initiate proceedings have to pay. Failure to pay court fees upfront is a ground for not considering the case. Court fees can be either a percentage of the subject of litigation, usually about 4 percent, or a flat amount. The losing party is responsible for its own and the winning party's court fees unless this arrangement as determined by the judge appears to be unfair to the parties. Under this arrangement, common though it is, some of the population can be discouraged from defending their interests in court because there is always uncertainty and, owing to corruption, either real or perceived, unpredictability in the outcome of the case.

In Slovakia, affordability of legal action, including litigation, is one of the most critical issues influencing access to court services. The affordability of legal action is closely linked

[58] According to unofficial estimates, the Roma population represents from 8 to 10 percent of the total Slovak population. (World Bank. 2002. *Poverty and Welfare of Roma in the Slovak Republic*. Washington, D.C.: World Bank)

to legal aid, especially in areas such as funding, targeting, and mechanisms of delivery. Additional research and debate on access to court services and legal aid in Slovakia are recommended.

The main factors influencing the affordability of litigation are the court fees and the cost of legal representation. The average level of court fees is not considered prohibitive in Slovakia and does not appear to deter the public from using the courts, even though in some cases the court fees can discourage the poor from litigating. The affordability of litigation, however, is adversely affected by lawyers' fees. Although those schemes of representation that are free of charge or for a limited or nominal charge, and those legal aid schemes run by the government and various nongovernmental organizations alleviate the situation for some users, the existing economic barriers to accessing court services are still not fully addressed.

The recent introduction of new rates for legal services created an opportune moment to discuss how much legal aid Slovakia can afford and how to maximize the effectiveness of legal aid. Considering legal aid in the context of broader welfare objectives would be a constructive framework for such a discussion.

Legal Services

ONE would expect that lawyers should be champions of justice sector reform. However, as in many other countries, lawyers are beneficiaries of the existing system, and have little interest in changing it.

This report attempts to provide an overview of the legal profession in Slovakia. It identifies the intricacies of the organization of the legal profession, including the divisions between commercial lawyers and attorneys. Then the report introduces the regulatory framework under which legal professionals may practice law, and the barriers to entry that such rules and regulations create. It analyzes the scope of services provided by Slovak lawyers. It investigates the professional conduct of attorneys and commercial lawyers, and how their current behavior affects the ways in which they protect their clients' interests. Finally, it examines the costs of lawyers' services and reviewed the existing schemes available for providing subsidized legal services. Recommendations related to the need to strengthen the analysis of the Slovak market for legal services and to develop a comprehensive public policy that would encourage socially desirable behavior by key players, are provided within this report.

The greatest challenge in evaluating legal services is that very few precedents existed for the review of similar systems in developed countries, and virtually none for such a review in developing countries. Another challenge was the lack of data in this area.

The legal profession is a self-regulating authority and has market power. As in many other countries, although lawyers have a public function as officers of the law, they often provide legal services as private practitioners and regulate these services themselves through

their professional organizations. A stronger rule of law and improved access to justice cannot be realized without consideration of the legal services sector.

Market For Legal Services

This section offers an analysis of the Slovak market for legal services as perceived by Slovak attorneys, judges, and those who receive the services from both lawyers and courts. Interestingly, Slovak law asserts different key principles to define specific legal professions: attorneys and commercial lawyers. On the one hand, it defines attorneys as "free and liberal" and, consequently, not commercially motivated. On the other hand, the law anticipates that commercial lawyers operate on a commercial basis and are motivated by profit. This characterization captures a tradition of the relationship of the legal profession to the market, including common concerns about the commercialization of the legal practice. However, it is unlikely that incentives can be based on proclamations, even those included in laws.

In the literature, the legal and, for that matter, the medical professions are viewed as liberal and not guided by profit seeking. Lawyers are believed to perform beneficial acts for people and, consequently, their fees are seen as an outside consequence of their activities.[59] Still, lawyers operate within a market and are thus subject to the market's incentives.

Theoretically, justification for the regulation of the legal profession and legal services is found in the monopolistic and noncompetitive features of the legal services market through which the price of legal services depends on the value placed on them by clients and not on the actual costs of services. Because of these features, the price of legal services tends to be higher, and lawyers' efforts are devoted to those who are capable and willing to pay the price – in the case of Slovakia, usually businesses and rich individuals. Two levels of disparities in the distribution of legal services can be observed as a consequence of this rationalization: (a) a disparity between poor and rich, which translates into (b) the disparity between businesses and individuals, particularly underprivileged groups.[60]

The Slovak market for legal services can be characterized as having an enormous information gap between lawyers and clients, a perpetual deficit of lawyers, restricted intra- and professional competition, an absence of effective mechanisms to protect clients, and excellent opportunities for rent-seeking behavior on the part of lawyers.

The information gap between clients and lawyers in Slovakia is much greater than the gap in more industrialized countries. This is due to extraordinary recent changes in the legal

[59] See Van den Bergh, Roger. 1993. "Self-Regulation in the Medical and Legal Professions and the European Internal Market," In "Regulation of Professions: A Law and Economics Approach to the Regulation of Attorneys and Physicians in the US, Belgium, The Netherlands, Germany, and the UK, Antwerp, Belgium": MAKLU, 21-43.
[60] Hadfield, Gillian K., 2000. "The Price of Law: How the Market for Lawyers Distorts the Justice System." *Michigan Law Review* 98(4): 953-1996.

framework, deficiencies in institutional capacity, and the complexity of decision making procedures and the unpredictability of their outcomes. These factors, in combination with a relatively low legal culture and a rather passive approach to problem solving, exacerbate the vulnerability of consumers of legal services in Slovakia vis-à-vis the legal profession.

Although the Slovak economic transition resulted in a rapid increase in the demand for legal services, the supply of these services remained inadequate. Artificial barriers to legal education and the legal profession created a continual lack of local lawyers on the market. Moreover, strict barriers were imposed on foreign lawyers, who, until today, were forbidden from providing legal services in the Slovak market. Competition within the market was further undermined by severe restrictions on business organization, a prohibition on advertisements and the specialization of lawyers. Poor self-regulation within the legal profession left consumers unprotected from abuse. They have little information on how to make educated choices on service providers and literally no means to defend their rights against lawyers. As a result, during the last decade, Slovak lawyers have enjoyed excellent conditions for rent-seeking behavior.[61]

Given this state of affairs, lawyers have emerged from transition as an extremely influential, if not the most influential, professional group in Slovakia. The legal profession has accumulated great economic influence because economic transitions tend to proceed using legal means. The number of lawyers in political positions has also been high, creating substantial power in the political arena.

The information collected on the Slovak market for legal services indicates that the quality of legal services is less than satisfactory. It appears that the price for legal services is such that only those with high incomes can afford them. Moreover, lawyers are the brokers of corruption in the Slovak courts and contribute to delays in court proceedings.[62] This has an impact on all of Slovak society, but especially on Slovakia's more vulnerable groups (for example, the Roma population) who deal with the courts frequently and who are largely unable to pay for legal services.

The government has shown very little, if any, interest in monitoring and overseeing the legal profession and in intervening in the market for legal services. Since the legal profession was liberalized from the state, no data have been collected nor any research conducted to understand better the market's dynamics and address emerging problems. Throughout the 1990s, the government based its key policy decisions about the professionalization of legal services on other countries without consideration for the specifics of the Slovak legal services market. Later interventions in the market related

[61] Several conditions must be in place in order to allow an interest group such as lawyers to participate in rent-seeking behavior. The interest group should be small, single-issue-oriented, well organized, and have low transaction costs. On the other hand, the information costs for the public at large should be high.

[62] The 2002 survey conducted by Transparency International asserted that about 90 percent of bribes in courts are given to judges and court clerks by attorneys and commercial lawyers.

solely to price, and the only beneficiaries of these interventions appear to be attorneys and commercial lawyers.

Regulation of the Legal Profession

The Slovak Constitution (articles 29, 37), the Law on Attorneys,[63] and the Law on Commercial Lawyers[64] provide the legal framework for the organization of the legal professions and the establishment of their bar associations as public entities. The legal framework is complemented by Decrees of the MOJ on lawyers' fees[65] and a set of internal bar association regulations.[66]

The constitutional basis for legal services in Slovakia is the right of the citizens to be counseled and represented in legal affairs. The provision of legal services is professionalized; that is, attorneys and commercial lawyers organized in professional organizations, or bar associations, are the legal counsels and representatives in legal affairs.

The bar associations are public entities that control entrance into, as well as performance of, a profession. Bar associations do not regulate lawyers' fees. Instead, the MOJ has maintained control over these fees. Nonetheless, this lack of control over fees does not appear to diminish the power and influence of the bar associations, because unregulated prices prevail de facto, on the market for legal services.[67]

Bar Associations

This section presents a brief overview of the history of the legal profession in Slovakia followed by the review of the organizational setup of the two co-existing bar associations.

The formation of an independent legal profession in Slovakia was initiated in the early 1990s. The previous organization of socialist advocates was transformed into the Bar of Attorneys. When first formed, the Bar of Attorneys consisted of only 250 lawyers; all of them were advocates, mostly criminal law practitioners, who acquired their skills during the socialist period. Despite an obviously low membership, the efforts by lawyers employed by state companies and cooperatives to join the bar associations met largely with defeat, primarily because the Bar of Attorneys wished to maintain a monopoly over the market for criminal defense, which at that time was also the most stable legal services market in Slovakia.

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[63] The law 132/90 amended by the law 302/99.
[64] The law 129/91.
[65] The Decree of the MOJ 163/2000.
[66] As of today, the bars' General Assemblies approved the following set of internal regulations: the Code of Conduct, the Disciplinary Order, the Organizational Manual, the Manual on Examinations, the Electoral Manual, the Decision on Membership Fees, and the Decision on the Social Fund.
[67] The possibilities for regulatory intervention include informational remedies, quality regulation, certification or licensing, and self-regulation. In the case of licensing, licenses are issued by public authorities, whereas in the case of self-regulation, the professional body itself controls entry and performance, including price.

Consequently, state company and cooperative lawyers created their own organization, the Bar of Commercial Lawyers.

As time passed, the market for legal services proved large enough to accommodate both groups of professionals. Criminal defense demonstrated itself to be a less significant source of revenues. Hence, the Bar of Attorneys lost interest in dividing the profession and soon it started to lobby for the unification of the two bars. Ironically, today it is the Bar of Commercial Lawyers that resists the idea of a merger between the two groups. This is likely to be an attempt by commercial lawyers to complicate attorneys' efforts to expand their business into the profitable commercial services market.[68]

Today, the legal profession in Slovakia is divided into attorneys and commercial lawyers, each with its own legal and institutional framework. The organizational structures of the two bar associations are identical; they both are centralized institutions and their frameworks are not parallel to the structure of the court system. The highest authorities within both bar associations are the General Assemblies, which elect the Board of Chairmen, the Disciplinary Chamber, and the Audit Chamber. The Board of Chairmen is composed of a president, two vice presidents, and 15 members. The Disciplinary Chamber is composed of a president and nine members, and the Audit Chamber consists of a president and 15 members.

Daily management of the bars is carried out by the Secretariat. The Secretariat and all other positions within both bar associations are filled by lawyers; consequently, it is lawyers who carry out all the bars' functions. The headquarters of the Bar of Attorneys is located in Bratislava, and the headquarters of the Bar for Commercial Lawyers is located in Banská Bystrica.

From a consumer perspective, a divided legal profession in Slovakia is difficult to justify as long as the competition among lawyers remains severely restricted. The existence of two professional bodies, each with its own institutional and regulatory structure, is costly, if not duplicative. From the government's perspective, the existence of two similar bar associations makes public supervision of legal professionals more complicated. Consideration should be given to merging the bars or to eliminating any privileges of bar associations vis-à-vis each other.

Competition within the Profession

A lack of professional competition emerges from this brief analysis of the scope of legal services offered in the Slovak Republic. There appears to be very little professional competition

[68] In 2002, the government pushed for a reform of the legal profession. The reform package included a proposal for more flexible rules for business organization and for the provision of legal services by foreigners. Ironically, the most controversial part of the package was the government's suggestion that the bars be unified. This proposal met with strong opposition from commercial lawyers, who felt that their interests would not be well protected under the structure of an umbrella organization.

between attorneys and commercial lawyers, or between attorneys and commercial lawyers and other legal professionals. A lack of legal professionals in general may contribute to this situation.[69]

Two other factors add to the lack of professional competition in the market for legal services in Slovakia: the monopoly to plea before the courts and prevention of foreign lawyers from providing legal services. In Slovakia, local commercial lawyers are not permitted to plea before criminal courts, and foreign lawyers are prevented from appearing before the Slovak courts.

While the professional monopoly of lawyers might have been justified in the past, it is likely to have outlived its usefulness. Consumers are better prepared to learn to defend their interests as the dissemination of legal and consumer protection information is growing. Competitive pressures generated by economic liberalization, globalization, and European integration are expected to create stronger incentives for quality and efficiency.

In addition, the reasons behind the lack of professional competition between the two bars is important because of their impact on the choice, quality, and cost of legal services.

The services offered by both Slovak attorneys and commercial lawyers include civil, commercial, and administrative litigation; contract drafting; support in negotiations; mediation; and legal analyses. The attorneys have an exclusive monopoly on criminal defense.

In court proceedings in areas other than criminal law, attorneys and commercial lawyers do not have a complete monopoly. Other legal professionals, mainly in-house counsel for companies, or even nonprofessionals, are allowed in most court matters to represent litigants on a no-fee basis. The litigants, with few exceptions, can also choose to decline legal representation and to defend their rights in the courts themselves. This option is resorted to in cases in which representation does not pay for the anticipated gains of litigation, for example it often occurs in petty criminal cases and nonadversary civil proceedings.

Apart from attorneys and commercial lawyers, there is a limited number of out-of-court legal service providers. These providers include notaries, bailiffs, bankruptcy trustees, accountants, fiscal advisors, trade unions, professional organizations, insurance companies, nonprofit organizations, and consultant companies. Some of them (notaries and bailiffs) focus their work on specific legal services.

The scope of the work of these providers overlaps with the services of attorneys and commercial lawyers. For instance, notaries can draft contracts, particularly those concerning

[69] Notaries, for instance, do not appear to be concerned about the lower fees they charge for contract drafting, especially when these fees are compared to the fees attorneys charge for the same activity. To our queries regarding this matter we received a reply that "notaries are taken care of," with reference to their monopolistic authorities and subsequent income under company and security law.

real estate. Bailiffs provide legal services related to the enforcement of all kinds of court decisions. Attorneys and commercial lawyers often act as bankruptcy trustees and, in that capacity, have to compete with the other licensed professionals.

Other groups, such as accountants, trade unions, and insurance companies, provide legal services as a side activity. Because in Slovakia there are few data on the scope of legal services provided by these groups, it is difficult to assess how successfully they compete with attorneys and commercial lawyers.

Overall, the range of specialized legal services is growing, which benefits consumers. It may be reasonable to consider the abolition of the exclusivity of the right of attorneys and commercial lawyers to provide legal services. This could be done by introducing a certification that would signal that a service provider meets certain requirements. It is, however, critical that: (a) the government's regulations create fair conditions for competition in the market of legal services, and (b) the emerging groups of professionals are subjected to continuing and careful quality standards for evaluation and monitoring.[70]

Entry to the Legal Profession

In theory, the regulation of the provision of legal services should lead to three benefits: it should reduce the cost of searching for lawyers and legal advice, it should advance the quality of service, and it should increase welfare. It follows from our analyses that the current Slovak regulation of the legal profession and legal service providers does not ensure the benefits described above.

At present in Slovakia there are approximately 1,472 attorneys registered by the Bar of Attorneys (of which 709 are women and 763 are men). About 1396 commercial lawyers are registered by the Bar of Commercial Lawyers. The number of lawyers per 100,000 inhabitants in Slovakia is still lower (60), when compared to 316 in the United States, 300 in Germany, 175 in France, and 100 in Latvia.

It is in the public interest to eliminate any unnecessary barriers of entry to the legal services market in order to ensure an adequate supply of legal services. There are strong reasons to believe that the excessively high prices of legal services in Slovakia result from specific factors, one of which is a constant shortage of lawyers.

In Slovakia during the last decade, limited access to legal education, coupled with stringent entrance requirements set by the Bars, prevented the adequate inflow of new lawyers. The mandatory apprenticeship requirement is particularly difficult to comply

[70] For instance, the government's regulations established different fees for notaries and lawyers for the same type of services. This difference in the official fee schedule makes it difficult for the notaries to compete with the lawyers.

with, as the number of apprentice positions is limited and in full control of legal market insider based on personal relationships. These entry barriers are effectively protectionist and inconsistent with the spirit of European integration. These problems also point to broader governance issues in the legal services sector.

Inadequate attention by the state and the Bars to the preparation of young professionals for a career as an attorney or commercial lawyer is also a matter of concern. Apart from the courses organized by the Bars, apprentices have little opportunity for structured, especially theoretical learning. The Bars do not specify what kind of practical skills the candidates are supposed to acquire during their apprenticeship; nor can they guarantee the placement of candidates with suitable mentors, owing to the limited number of practicing lawyers. Furthermore, the Bars do not monitor or guide the process of preparation of apprentices for future work as lawyers.[71] Since the market-based "pro-profit" incentives control the firms' behavior, consequently, it is unrealistic to expect law firms or lawyers to make significant investments in the training of apprentices.

The number of lawyers is not restricted, and therefore there are no direct quantitative restrictions for entry in the legal profession. Admission to both bar associations is conditional on whether an applicant has a high moral profile, completed the legal education, and training that concludes with a bar exam. The ability to practice is further conditioned by an oath to the bar president and a subsequent registration as a member. Admission to the Bar is for life and is subject to a flat fee.[72] Ethical requirements for entering the profession are limited to having a clean criminal record. There is no single known case of disqualification of an applicant for registration based on ethical grounds. All bar candidates have to complete two stages of education and training. The first, "academic," stage results in a law diploma. Legal education from Slovak or Czech Law Faculties or other foreign countries whose law degrees are recognized in Slovakia are required for the purpose of the bar membership.[73]

The second stage of the preparatory process is an apprenticeship, which concludes with a final bar exam. To start the apprenticeship program, a law school graduate has to enter

[71] For instance, in The Netherlands, the law firms submit to the bar annual reports on trainees' progress in the areas of training and learning.

[72] A commercial lawyer, in addition, is required to obtain a license from the Bar of Commercial Lawyers. The function of this license is rather formal, since it is issued by the bar without any additional conditions and is valid as long as the commercial lawyer remains a member of the bar.

[73] Over the last five years, the four accredited law faculties in Slovakia have trained (at last count) 3,758 lawyers. The acceptance rates into both law schools over the last 10 years have been the lowest in the country. As it happens, legal education is free, so there is no real economic burden on the student to apply. However, there does seem to be some credence to the idea that law school is a corrupt institution, as students often gain acceptance and pass examinations as a result of the connections they have. One can speculate that corruption has the potential to increase the costs of legal education to levels that are unaffordable for lower-income families. Overall, legal education appears to be a factor that may reduce access to the legal profession and subsequently increase the cost of legal services in Slovakia.

into a contract with an established practicing lawyer and register at the bar. Specific criteria for choosing a particular graduate for an apprenticeship do not exist. However, the decision depends on the individual lawyer or law firm, and anecdotal information shows that these ties are often the result of patronage (for example, family ties and personal relationships). Moreover, some law firms and lawyers charge a special fee for accepting an apprentice, a practice that goes unnoticed by the Bars, although it raises legal and ethical concerns.[74] The mandatory training period during the 1990s lasted five years, and significantly contributed to the shortage of lawyers in Slovakia. The change introduced at the end of the 1990s decreased the time of training to three years, a length compatible with European standards.[75]

The role of the bar associations in administering the apprenticeship programs is largely limited to delivering mandatory training courses. These courses, rather modest in their content, are focused on the necessary legal training and also include some training in professional ethics.

Bar exams are administered in a unified manner by both bar associations. At present, the number of candidates who do not pass the exam is marginal, although the exams are perceived as becoming increasingly difficult and, furthermore, are comparable to those required for prosecutors or judges. A commission of about 20 people, composed of attorneys, judges, and other legal professionals, tests the knowledge and competence of candidates in the main legal fields, including criminal law (criminal law is not included in the test for commercial lawyers), civil and family law, commercial law, administrative law, financial law, land law, social security law, and the regulatory framework for the legal profession. Reportedly, the complexity of tests differs between the Bars. The tests of the Bar for Attorneys are perceived to be more difficult not only because of the broader scope of issues, but also because of higher standards.

As part of a reform agenda, consideration could perhaps be given to the following policy options for improving the bar entrance policy: (a) reviewing the current admission procedures in order to identify ways to speed up the numerical expansion of the legal profession; (b) introducing more flexible apprenticeship requirements that would expand the options for training outside established law practices and outside Slovakia; (c) waiving the apprenticeship requirements for otherwise qualified individuals; (d) introducing automatic admission of members of the EU and other foreign bars; (e) abolishing any entrance requirements that directly or indirectly discriminate against otherwise qualified non-

[74] During our mission to Slovakia in 2000, we found several advertisements in newspapers where young law school graduates offered payment for training at a law firm, and other advertisements announced that attorneys and commercial lawyers were willing to train graduates for a fee.

[75] With the exception of the United States, throughout the rest of the world a law degree is not sufficient for the practice of law. In Germany, 30 months of additional training are required, in addition to a second law degree. In Belgium, Great Britain, and The Netherlands, 36 months of additional training must be completed and a second examination passed (Firshinger, Jorg. 1993. "Attorneys: Summary of the Cross- National Comparison," In *Regulation of Professions: A Law and Economics Approach to the Regulation of Attorneys and Physicians in the US, Belgium, The Netherlands, Germany, and the UK,* Antwerp, Belgium: MAKLU, 359-370).

nationals; and (f) granting the members of EU and other foreign bar associations reciprocity equal to that which the Slovak legal profession received in other foreign jurisdictions.

Consideration could also be given to ways to better prepare young professionals for a legal career, by, for example, providing a better structure for mandatory theoretical training, setting clear professional and ethical benchmarks for apprentices, and carefully monitoring the practical training of apprentices.

Organization of Law Firms

The Slovak regulatory framework organizing businesses in the legal service industry seems to be inflexible. The main factors influencing the structure of Slovak law firms appear to be a relatively small market, stiff regulations that facilitate neither specialization nor business formation, and division of the legal profession into two groups, attorneys and commercial lawyers. The comparative lack of sophistication of services offered on the market and the low level of trust also contribute to the fragmentation of legal businesses. Another important factor includes a lack of business tradition in Slovakia.

According to 2000 official statistics, Slovakia has 1,368 practicing attorneys and 66 law firms. Only 12 percent of the attorneys were partners in associations. Forty-five associations had two partners; twelve associations had three partners; four associations had four partners; three associations had five partners; and one association had six partners. Almost half of the associations were located in the Slovak capital of Bratislava, and 22 percent of the associations were based on family ties.[76]

As a result of Slovakia's regulations, a typical Slovak lawyer is self-employed and does not have a specialization. The options for choosing the legal status for a law firm are limited in Slovakia. Attorneys and commercial lawyers can only form partnerships, where practicing lawyers are co-owners. Mixed associations between commercial lawyers and attorneys are not allowed in Slovakia, a factor that further circumscribes the scope of options available for the creation of a business in the country.

Lawyers in associations can be accountable to clients either individually or collectively. Profits and losses are shared according to agreed-upon rules. Although there are no explicit restrictions on the size of law firms, the market is dominated by one-person and small-sized

[76] To compare this situation with other countries, in the United States, for example, a survey of the Chicago bar concluded that the profession is divided into two spheres. The corporate (any kind of partnership) sphere is characterized by large firms populated by elite law graduates who are well connected and influential in the profession. These lawyers serve business clients on business matters and engage in complex transactions and litigation, work that is perceived as highly prestigious. The personal client segment is characterized by solo practitioners or small general practice/slightly specialized firms serving personal clients on personal matters and small business matters. Work is routine or dominated by personal injury litigation done on contingency (Hadfield, Gillian. February 2000. "The Price of Law: How the Market for Lawyers Distorts the Justice System," *Michigan Law Review*: 98: 4.

firms.[77] Lawyers' specialization is explicitly restricted, and they tend not to specialize. Law firms' staffs include associates, support staff, and trainees.

Over the past few years, an increasing number of young legal professionals have entered into employment relationships with law firms. Reportedly, they pass the bar exam, but do not take the oath to gain the legal status of an attorney or a commercial lawyer. The benefits from this situation are clear for established lawyers; that is, they exploit qualified and relatively cheap labor and, at the same time, eliminate competition. However, it is difficult to believe that partnerships or independent practices would not normally be the alternatives preferred by young lawyers. Possible explanations may include increasing difficulties associated with establishing or buying into a practice. The reasons behind the situation of young legal professionals could be economic as well as regulatory.

Law firms all over the world can gain greater efficiency from economies of scale; professional management; internal specialization; and cooperation among lawyers and in some cases among accountants and other professionals.[78] A review of legal experiences in both the European and international arena suggests that, in an increasingly competitive environment, flexibility is critical in the ability to meet the legal needs of corporate and individual clients.

Allowing foreigners to enter the Slovak market for legal services is another option Slovakia might weigh. Although the Slovak rules regarding the establishment and provision of services do not subject foreigners to any additional requirements, the regulations make it much more difficult for equally qualified and experienced foreign lawyers to join the bars. For instance, although membership in foreign bars is, in principle, not incompatible with membership in Slovak bars, lawyers and their associations are allowed to have only one residence. Consequently, a foreign firm with residence in another country cannot establish residence in Slovakia.

Unlike Slovakia, in countries such as the United States, there are no restrictions on foreign lawyers other than the requirement of bar membership, EC member country attorneys enjoy, for the most part, freedom of service. However, in other countries, such as Great Britain, some restrictions still exist on the freedom to plead before the courts.[79] As our analyses show, Slovakia has fallen behind European trends.

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[77] A complete list of law firms with the names, addresses, and language skills of its associates is regularly published by the bars.

[78] There is also a correlation between the complexity of legal services and the size of a firm: larger firms provide more complex services. Consequently, in theory, the fact that the Slovak legal market is dominated by one-person businesses could also result from the relatively low complexity of legal services in the country (Heinz, John P., Robert L. Nelson, and Edward O. Lauman, *"*The Scale of Justice: Observations on the Transformation of Urban Law Practice*,"* *Annual Review of Sociology 27: 337)*.

[79] Finsinger, Attorneys: Summary of the Cross National Comparison.

It is difficult for foreign legal firms to establish partnerships with Slovak firms. Slovak law restricts opportunities for business cooperation between Slovak and foreign lawyers by allowing for only personal associations. Therefore, the most frequent form of international cooperation is employment of local lawyers by foreign firms or cooperation on a contractual basis.

The Slovak bars oppose the idea of allowing foreign lawyers to practice in the country. They are particularly opposed to international firms providing a wide range of professional services. The bars' arguments are legal in nature and related to protection of the consumers. The claim is that foreign firms will undermine the Slovak market by charging higher fees for lower-quality services, a quality deficit that will result from their lack of expertise in Slovak law. Responding to such an argument, one can suggest that, if foreign companies indeed display such a pattern (despite the government's prerogative to regulate both maximum and minimum fees), they are likely to price themselves out of the market. In addition, with reference to the claim that foreign firms lack Slovak legal knowledge, these foreign companies can employ local experts with solid knowledge of Slovak legal conditions.

Another frequently used argument for preserving the status quo is that some EU members, such as Austria, Germany, Great Britain, and Belgium, in addition to the United States, also fail to secure full freedom of establishment. While this is true, it should be said that, according to the objectives of the EEC Treaty on Free Movement of Goods, Capital, and Services, EU member countries are obligated to continually abolish restrictions on the rights of establishment and not create new ones. Another important reason for dismantling the status quo is international lawsuits, a logical consequence of market integration. If multinational law firms are not created to address the demand for legal services associated with cross-boundary lawsuits, then the cost of such suits will increase exponentially.

There is no doubt that Slovak legal services will evolve, and that such services will ultimately meet international market standards, including the abolition of direct and indirect restrictions on the provision of legal services and on the right of establishment. The Slovak legal profession will eventually need to compete in the international market.

In order to ensure a reasonable level of competition among Slovak lawyers, it might be worthwhile to consider: (a) lifting the restrictions on the business organizations of legal service providers and (b) including legal services in the competition policy of Slovakia.

Professional Conduct

Relationships between lawyers and their clients are based on trust and confidence. For the legal system to function properly, lawyers must act with diligence and skill on behalf of their

clients, while at the same time displaying professional courtesy toward their colleagues. Without an appropriate degree of cooperation and professional interaction among lawyers involved in adversarial proceedings, disputes are not resolved quickly, fairly, or inexpensively. Conversely, an excessive display of courtesy can turn into collusion when lawyers seek to protect their own interests to the disadvantage of clients.

It appears that the Slovak conditions favor collusion at the expense of vigorous advocacy on behalf of clients. Lawyers tend to place loyalty to the profession into their defense strategies, as well as their behavior toward opposing counsels. For example, lawyers rarely expose a colleague's lack of preparation or professional incompetence in court. Unfortunately, it appears that judges witnessing such behavior by lawyers in their courtrooms do the same. The codes of conduct reinforcing the sense of solidarity within the legal profession further weaken competition and do not benefit the consumers.

Lawyers' professional loyalty and judges' tolerance of the misconduct of lawyers should not undermine competition among legal service providers. As a result, there should be clear ethical standards favoring clients. The rules regulating the professional interaction of lawyers might need to be reviewed in the context of the public interest. Users of legal services, the courts, and the lawyers themselves could benefit from well-defined, clear, results-oriented procedures regulating lawyers' behavior in litigation. It might be worthwhile to ensure that the rules regulating lawyers' conduct contribute to the efficiency of the legal process by encouraging lawyers to cooperate with the court and legal officials.

Advertising

Advertising can be a powerful vehicle of information, when used to aid people in choosing appropriate lawyers. The restrictions on advertising by lawyers in Slovakia are based on an idealistic view of incentives. These restrictions deprive consumers of the ability to make educated choices in the selection of legal services and shield the lawyers from professional competition. This ban, which is meant to protect the lawyers, can in fact result in their losing business to colleagues from foreign countries where restrictions on advertising have been phased out.

The Code of Conduct (Part 7, Articles 40–46) of the Bar of the Attorneys reflects the traditional view that advertising or any publicity is contrary to the professional dignity of a lawyer. It states: "An attorney presents himself through service. S/he must not use improper or distasteful advertisement. In public, and in dealings with mass-media, s/he should not promote himself/herself, his/her practice or particular cases." Slovak lawyers are also banned from soliciting their clients or using others to perform this task. Lawyers are also prohibited from including any information on official papers or envelopes used by legal firms. A 2002 amendment to the code, however, did allow lawyers to disclose the price of their services to the public.

As Europe is facing a unified market for services, it is also moving away from regulation to deregulation and from absolute prohibition of advertising to regulated advertising.[80] In Slovakia, providing information about lawyers and their specialization can contribute to a decrease in the information asymmetry between lawyers and clients; consequently, said information improves the protection of clients' rights and transparency.

Slovakia is moving in this direction with information about language capabilities being publicly disclosed. Recent changes also allow for disclosure of the information on price, which affects corruption.[81] Further, the lifting of the ban on commercial advertising and limiting the regulation in this area to conventional restrictions on providing false information to the market will benefit both lawyers and their clients in the long run. This measure would be particularly effective if accompanied by mandatory disclosures.

Protection of Client

The existing regulatory framework does not adequately protect clients from the abuse of lawyers. The following issues have been raised with respect to client protection: (a) it is difficult for a client, especially an individual, to identify and select an appropriate lawyer; (b) lawyers are not obliged to disclose to clients information about their services and price prior to entering into a contract, nor during representation, and lawyers are not obliged to keep records on services provided; and (c) lawyers have the right to decide, without consulting the client, what is in the client's best interest and how this interest should be represented. The law defines lawyers' conduct vis-à-vis a client in broad terms: "A lawyer is obliged to defend the rights and legitimate interests of the client, act with dignity…use all available legal measures and tools which, according to clients instruction and his best understanding, lead to the result."[82]

The bar has no obligation to provide relevant information about lawyers nor to facilitate a client's selection of the most appropriate lawyer. While people are free to choose any lawyer, lawyers are not entirely free to accept or turn down a request for legal services.[83] However, in cases of potential disloyalty to the client and/or a conflict of interest, buyers must

[80] For instance, in Germany in the 1990s, the Federal Civil Court widened the catalogue of specialization titles to: (a) Fachanwalt for public law, (b) Fachanwalt for tax law, (c) Fachanwalt for labor law, and (d) Fachanwalt for social law. Further designations, however, can also be permitted if they are not used as titles, and if given on the basis of a special examination, but used as a term for factual practice specialization (Economic Institute for Interdisciplinary Research on Labor Market and Distribution Issues of the University of Utrecht and Department of Law of the University of Antwerp. 1993. *Regulation of Professions*).

[81] For example, in The Netherlands, England, Wales, and the United States, price advertising is allowed (Finsinger, *Attorneys: Summary of the Cross-National Comparison*).

[82] Law on Attorneys.

[83] A lawyer has to turn down a request for legal services in the following situations: (a) when providing a service to someone with conflicting interests, (b) when a conflicting party is represented by his or her associate, and (c) when persons close to him or her took part in the negotiation of the case (Economic Institute for Interdisciplinary Research on the Labor Market and Distribution Issues of the University of Utrecht and Department of Law of the University of Antwerp, *Regulation of Professions*).

turn down the request and explain the reasons for that decision to the client. The potential client may request that the bar review the lawyer's decision. If the bar is in agreement with the position of the lawyer, then it confirms the decision and assigns the client a new lawyer. A lawyer assigned to a client by the bar is obliged to represent that client.

As a matter of principle, a lawyer is supposed to put the client's interests before his or her own interests. The law and the codes of conduct require that the lawyer keep the client well informed of the state of the cases and provide the client with candid legal opinions.

However, a lawyer is not explicitly bound by the client's wishes nor must the lawyer consult a client on important decisions. Since lawyers do not maintain records on their counseling, clients cannot challenge the quality of service he or she received. As for costs and fees, a lawyer has only a limited obligation to inform a client about estimated costs or about the system used to calculate the bill prior to an agreement or during representation. Monitoring and enforcement of the described provisions, which are supposed to shield clients from abuse, are almost nonexistent.

By limiting the information on lawyers available to the market, the bars have promoted a perception that there is no difference in the types and quality of services provided by lawyers. These policies increase clients' information costs and restrict competition, ignoring the interests of the consumers. For consumers, variation in the quality of legal services is beneficial when it is transparent and accompanied by a respective variation in price. If a claim is small, for instance, the plaintiff can be better off engaging the assistance of a less experienced and less expensive lawyer, rather than a lawyer whose fees may exceed the probable gain of the litigation.

Information about, and monitoring of, lawyers' services is not simply a problem for clients; in the end, it has a tremendous impact on the profession itself. The Bars can be involved in quality assurance; if the public has little confidence in the quality of legal services, the thresholds to call on a lawyer will accordingly be high and willingness to pay for legal services will be low. The resulting drop in demand will force a certain number of lawyers to withdraw from the market.

Rules on not withholding information, timely production of evidence, and cooperation with the courts and other authorities are not reflected in the Code of Conduct. Furthermore, in the overall procedural context, violation of these rules is not considered a breach of the Code of Conduct and is not brought to the attention of Bars. Instead, enforcement of the procedural rules is the responsibility of the judge. Although there is little empirical evidence on whether and how lawyers contribute to the courts' ineffectiveness, there is a strong public perception – shared by the judges – that this is an issue that deserves research and the attention of policymakers.

A comprehensive policy and regulation addressing the issues of consumer protection for legal services should be considered to improve the quality of services. Similarly, users

of the courts should have access to information that would help them effectively use lawyers.

Improving public access to information about the judiciary, court management, and lawyers through the Internet and the media will provide consumers with powerful tools to make informed choices about the use of legal services. First, the regulator of the profession can consider helping consumers to assess the quality of the lawyers.[84] Second, mandatory disclosure, which is common in other countries can be considered. Third, restrictions on advertising can be lifted.

An information disclosure policy with reporting and disclosure requirements can greatly facilitate compliance with quality standards. The lawyers, the bars, as quasi-public organizations to which the government delegates policy functions, can be asked to submit annual reports on their activities. Such reports can be audited. In addition, the MOJ should develop a capacity for oversight of the legal services and report on the status of the legal service market to the National Council directly.

For example, mandatory disclosure requirements on lawyers' specializations, experience, and fees can greatly improve consumers' ability to identify the services they need. Lawyers could be obligated to advise their clients on the quality of services they can expect and what opportunities for redress they have in case they are not satisfied. In general, consumer protection and education should be key components of public policy on legal services.

Discipline of Lawyers

The system for detecting misconduct and punishing professional lawyers is closely related to the issue of client protection. The range of disciplinary sanctions of lawyers in Slovakia includes a warning that is a result of a preliminary investigation, an official reprimand, a fine up to 10,000 SK (about US$250), and a suspension (removal of the lawyer's name from the rolls) for up to five years. Only repeated or serious breaches of the provision of the Law on Attorneys and the Law on Commercial Lawyers constitute professional misconduct and may cause disciplinary proceedings against an offending lawyer. Since the laws and Code of Conduct provide few guidelines on what is serious misconduct, it is almost exclusively at the discretion of the bar's authorities to define such misbehavior.[85]

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[84] Although it is extremely difficult to select a lawyer, given the complexity of legal services, a rational consumer still tends to choose the best he or she can afford and for that requires comparative data. Potential clients are likely to search for significance in whatever information is available, as that is the only way they can affect the outcome. Therefore, information about lawyers should be collected, analyzed, compared, and commonly and publicly shared. (Hadfield, "The Price of Law: How the Market for Lawyers Distorts the Justice System.")

[85] The Code of Conduct mentions the issue of serious breach of professional conduct only in its section on the relationship between attorneys and the bar. The following breaches are considered serious: (a) if an attorney does not pay his membership fee in time and/or a prescribed amount of money, (b) if an attorney does not inform the bar about a residence or about changes in residence or name, (c) if an attorney does not inform the bar about an association with other lawyers within 15 days, and (d) if an attorney does not pay his or her insurance.

Furthermore, the Code of Conduct states that a "breach of the rules should be handled in a disciplinary proceeding only if there is no other way of solving the issues." On the other hand, the Code of Conduct states indirectly that it is not a regulation but "a record of customary rules" and, as such, is not necessarily applied by the Disciplinary Chamber and the Supreme Court. The codes of conduct are themselves internal regulations of the Bars, and their enforceability in the courts is questionable.

Even if a client manages to file a complaint and subsequently initiate proceedings, conviction by the Bar or court does not entitle the complainant to damages. Clients suffering financial loss as the result of a lawyer's negligence must bring a claim for damages to the ordinary courts. The case is judged according to civil law standards of liability. The civil liability risk arising from professional negligence is compulsorily insured. Given the regulations described above, it does not come as a surprise that not one single case of liability against an attorney or commercial lawyer has been brought before the Slovak courts.

A special regulatory and organizational structure has been created for handling disciplinary matters. The three-member Disciplinary Council, composed of members of the Disciplinary Chamber of the Bar, acts as the first authority. The Board of Chairmen is the authority that hears any appeal. The Board of Chairmen's final decision can be reversed if it violates the law or regulation of association. In addition, the final decision on disbarment can be challenged in the administrative chamber of the Supreme Court, whose decision is final.

All complaints about attorneys must be addressed to the Bar. The complaints are registered in a central register and scrutinized by a Bar's Secretary. After three months, the Bar's Secretary either dismisses a complaint or submits it to the Chairman of the Audit Chamber. The Chairman conducts a preliminary investigation, and, if the Chairman finds the complaint to be substantiated, an official disciplinary proceeding is initiated. The disciplinary proceeding must be initiated within three months from the time when the Chairman first learns about the incident of alleged professional misconduct, and no later than a year after the incident actually took place. The Chairman or a designated member of the Audit Chamber acts as the prosecuting attorney in the disciplinary proceeding.

The disciplinary system for lawyers has certain features that prevent it from being sufficiently effective in enforcing the codes of professional conduct and in protecting the interest of clients. First, the definition of misconduct is unclear. The codes of conduct emphasize a lawyer's obligations to the Bars, as opposed to their clients.[86] Second, the risk of sanction for misconduct is minimal. Sanctions, especially fines, are too low to discourage wrongdoing and neglect on the part of lawyers. In addition, the procedures for filing complaints and initiating disciplinary proceedings are too lengthy, cumbersome, and

[86] Only an insignificant number of provisions in the Code of Conduct concern relations between lawyers and their clients (8 out of 50). In comparison, the Dutch Code of Conduct contains about 20 (out of 47) articles that deal directly or indirectly with the interests of clients.

nontransparent for clients. Overall, it appears that maintaining the professional integrity of their members is, at least anecdotally, not high on the list of priorities of the Slovak Bars.

Making lawyers accountable for meeting performance standards is central to ensuring quality legal services. Any performance standards need to be focused on professional ethics and transparency. However, in Slovakia and many other countries, the regulatory policies concentrate on the entrance to the profession rather than ongoing monitoring of performance.

Asymmetry of information in the legal service market and the fact that the market, left to its own devices, does not lead to socially sound outcomes, makes a strong case for holding the legal service providers accountable for observing professional standards and disclosing information that enables consumers to make educated choices. In order to strengthen accountability and protect the interests of consumers, the following policy options should be considered: (a) introducing a law on legal service standards that focuses on ethical norms in interacting with clients and the courts, and information disclosure (developed with participation from consumers); (b) creating a mechanism for enforcing legal service standards independent from the lawyers and to which consumers can appeal directly if they so wish; and (c) giving consumers of legal services a choice to channel their complaints through the Bars or through a disciplinary system independent of the legal profession. The judiciary can play a greater role in the supervision of the legal profession than it currently plays. As discussed above, the lawyers' professional associations – without the involvement of outsiders – manage the disciplinary system for the lawyers. It is difficult to bring a lawyer to the court, and only the Supreme Court can hear cases on lawyers' malpractice.

Cost of Legal Services

This section reviews lawyers' fees. The importance of issues raised in this section is associated with the fact that the cost of lawyers' services is the greatest barrier to access to legal services in Slovakia.

No analytical research has been carried out on who are the clients, how much lawyers charge, and what fee mechanisms lawyers use. The suggestions and conclusions in this report are based on interviews with legal professionals and clients as well as on a 2002 anticorruption survey and theoretical literature drawing on tools of economic analysis. As a result, the conclusions should be considered preliminary.[87]

The following is a description of the financial situation of a firm consisting of two above-average successful Slovak lawyers with 15 years of experience. In 1999, the monthly net income of each of these lawyers was 250,000 SK (US$6250); of this amount, about

[87] Currently, the Slovak Government and the Bank are implementing a follow up study on market for legal services which will address the price and quality of legal services provided by lawyers, notaries and bailiffs.

150,000 SK (US$3750) was derived from fixed fees (an income paid by private and public companies and based on long-term contracts) and 100,00 SK (US$2500) was earned from individual clients. The monthly expenditures related to the firm (one secretary, rent in an exclusive building in the center of the capital, and other expenses) were between 70,000 and 80,000 SK (US$1750 and US$2000) respectively. The annual income of each of the partners was between 3 and 4 million SK (US$75,000 and US$100,000). The average monthly income of a lawyer in that year, according to official statistics, was 17,000 SK (US$425). The average monthly income for the general population at that time was about 12,000 SK (US$300).

Of course, not all lawyers have incomes similar to this firm. However, the concept of a "poor or unemployed lawyer" in Slovakia appears not to be common. Moreover, official statistics confirmed that only a handful of lawyers are registered as unemployed by labor offices. As one of the interviewed attorneys said, there are no "walk-ins," and there are only a few individual clients who usually come recommended and from the upper middle class.

Another interviewed attorney claimed that no lawyer with strong reputation would participate in mandatory representation because it is not financially advantageous. Judges know this and therefore appoint only lawyers who are willing. Thus, apprentices and a cluster of inexperienced and less competent attorneys occupy the market for mandatory legal representation. Even they limit their efforts, since there is little certainty that they will receive payment for their services on time. None of the interviewed lawyers had participated in any "free-of-charge" schemes involving the provision of legal services.

Legal Fees

Fees are regulated by the MOJ. Under the law, a lawyer has to make sure that his or her assistance is "efficient" and that the fee is "reasonable." Lawyers should not acquire a financial interest in the subject matter of a case they are overseeing (a conflict of interest). The lawyer is entitled to a fee, reimbursement for the out-of-pocket expenses relevant to the service provided, and reimbursement of "lost time." The fees are further specified in the Decrees of the MOJ issued in 1990. Under pressure from attorneys and commercial lawyers, these fees were increased in 2002.[88]

The MOJ's decrees leave the fee arrangement up to the lawyer and the client. They allow for three methods for assessing and calculating fees: (a) contingency fee[89] – *pactum de quota litis* – defined by a portion of a realized claim (up to 20 percent if a lawyer is fully successful, but if a lawyer is not fully successful, the tariffs determined in the decree are followed); (b)

[88] Our report is based largely on the old fee system, although the possible impact of the increased fees has also been considered. The new fee system aims to adjust the fee scale for inflation; the objective of the change was to give lawyers what they deserve.

[89] Contingency fees or commission-based fees are based on some percentage of the amount recovered or the value of the matter being handled. By comparison, contingency fees in the United States are generally set from 25 percent to 33 percent.

hourly fee[90] – defined by the time engaged in the case (the basic rate was 200 SK, which is about US$10, although this fee could be negotiated, depending on the complexity of the case, from 100 to 600 SK (US$5 to US$30) – recently, the hourly fee was altered to represent ¼ of the calculated base, a figure which can be increased or decreased by half; and (c) a flat fee,[91] usually used if lawyers provide services to firms for longer periods.[92]

Hourly fees are generally used for consultations with individual clients and are usually low. The same can be said about contingency fees. It seems that the most routine method of assessing and estimating fees for representation is a fixed schedule of costs that is, in principle, linked to the value of a dispute (flat fee or tariffs).[93] In general, the legal profession provides little flexibility in the negotiation of fees between clients and lawyers. Since company fees are tax deductible, there is a difference between what individuals pay and what companies do. Adding to the problem of the limited number of lawyers, one can conclude that individuals have little chance to win when competing with companies for the attention of the lawyers.

There are many indications that, because the system appears to be inflexible and because rates do not reflect market circumstances, regulation of fees is just ignored. These rules, however, are applied by the courts when decisions about shifting fee payments to losing parties are made and, in addition, in cases of mandatory representation.[94] This system has led to the dual scale of fees: one in which fees were market-based and one in which fees were regulated. Because of this dual-scale format, it has not been unusual for clients not to recover the full amount of the fee they paid to their lawyers. The 2002 fee reform attempted to

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[90] Hourly fees are time-based fees for which lawyers track their time and calculate their fees by multiplying the time by the chosen hourly rate. In Slovakia, the hourly fee system is combined with the value-based system in which a lawyer makes a judgment about the value of the work.

[91] Fixed fees are fees for which lawyers specify a fee in advance, typically for routine work where the tasks are well defined and predictable.

[92] The following schedule applies to most disputes: Up to 5000 SK (US$250), 500 SK (US$25); 5000 SK (US$250) up to 20,000 SK (US$1000), 500 SK (US$25) + 3 percent of the sum exceeding 5,000 SK (US$25); 20,000 SK (US$1000) to 200,000 SK (US$10,000), 1,250 SK (US$62) + 3 percent of the sum exceeding 20,000 SK (US$1000); 200,000 SK (US$10,000) to 1million SK (US$50,000), 6,650 SK (US$332) + 1 percent of the sum exceeding 6,650 SK (US$332); above 1 million SK (US$50,000), 14,650 SK (US$732) + 0.2 percent of the sum exceeding 1 million SK (US$50,000).

[93] For comparative purposes, in 1998 the average hourly rates for lawyers in the United States were US$180; large firm partners averaged $250 an hour, with the top firms earning more than US$385 an hour. An average lawyer bills more than seven hours a day. At these rates and with expenses that are billed separately, any legal matter can cost US$10,000 in a matter of days. It has been estimated that it costs a minimum of US$100,000 to litigate a straightforward business claim.

[94] According to Slovak law, the losing party in litigation pays some or all of the winning party's legal expenses, including lawyers' fees. On the European continent, fee shifting is a norm. In the common law world, there are two general approaches to fee shifting: "the English Rule," which shifts some or all of the winner's costs of legal representation to the loser, and the "American Rule," which does not shift fees, leaving each side responsible for its own lawyers' fees regardless of who wins, unless otherwise stipulated in a judgment (Kritzer, Herbert M., *"*Lawyers' Fees and Lawyer Behavior in Litigation: What Does the Empirical Literature Say?" *Texas Law Review 80 (June 2002): 1400-1403).*

address the problem by increasing fees for legal services and negotiating flexibility between clients and lawyers.

Another important issue to be considered in analyzing legal fees is the supervision of billing. In that respect, Slovak legislation and regulations rely completely on self-enforcement. The price that attorneys or commercial lawyers charge is not known. Regulations require neither specification nor explanation of the bill, nor that clients be informed about the financial consequences of lawyers' actions resulting from their handling of cases. Overcalculation could be considered and treated as any other misconduct, yet even fraudulent calculation is not listed as a serious breach of professional ethics. The regulations do not specify a body responsible for the enforcement of the billing rules. If a client is dissatisfied, he or she can complain to the Bars, although the Bars have no right to recover overcalculated/overcharged fees. The client has only one option for recovering overcharged fees; that is, to bring the lawyer to court. Given the nontransparent practices in assessing, calculating, and collecting fees, the chances of recovering overcharged fees are minimal.

The current regulation does not prevent the price of legal services from being excessively high. In addition, there is disparity between the price for legal services paid by corporations (businesses) and that paid by individuals for the use of legal services. There are additional issues with the system of legal fees, such as regulatory failure resulting in a dual-fee scale (official and actual), opaque procedures for calculating fees, and ineffective billing supervision.

Since complexity and uncertainty are inherent in the very nature of legal service, it is difficult to determine what is really needed and what fees are appropriate. Similarly, any additional supervision or review may have only a limited effect. Despite these problems, the issue of fees is critical. Comprehensive research of the legal fees system may be advisable to identify policy options for improving the system.[95] The international experience presents a variety of options for future reforms.[96]

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[95] It might be worthwhile to examine the applicability of the Dutch legal fee system, which uses the income of the district court judges as a benchmark for the lawyers' fees.

[96] In Belgium the legal fees are subject to the bar's regulations. The bar sets the guidelines for the estimation of fees. Usually, the guidelines determine only the minimum amount. In most cases, the guidelines make clear that the amount is related to the type of case handled and the court before which the case must be pleaded. These guidelines are said to provide information to the public at large, and therefore more transparency. The Bar Council and its president play important roles in supervising the fee in dispute with a client. If a client feels that the amount of the fee is too high, the client can complain to the Bar Council, which could eventually decrease the amount of the fee. In the United States, the increase in legal bills has led to a variety of efforts to contain costs of large firms. For example, in-house corporate counsels can oversee the cost-effectiveness of time spent by the outside lawyers on the corporation's legal matters, setting benchmarks for assessing incoming legal bills or estimating flat-fee agreements or contracting out legal research and unbending services. There are also independent watchdog services available in the market to assess legal bills on an as-needed basis. In Australia, on the other hand, a mandatory comparative price has been introduced (See Economic Institute for Interdisciplinary Research on Labor Market and Distribution Issues of the University of Utrecht and Department of Law of the University of Antwerp, *Regulation of Professions*; Hadfield, *The Price of Law: How the Market for Lawyers Distorts Justice System*).

Subsidized Legal Services

A lack of monitoring by the Slovak Government and the absence of relevant data make analysis of subsidized legal services extremely difficult. Still, it appears that free or subsidized legal services are limited in Slovakia. The Constitution provides for free-of-charge services, but in practice, it is almost impossible. The courts rarely appoint ex-officio lawyers to criminal defendants outside of the category of mandatory representation. A potential client can approach the Bar with a request for pro bono legal services. Since the Bars' budgets do not include any allocation for this work, a request for pro-bono services goes mostly unnoticed.[97]

In addition, some cases are exempt from court fees (for example, alimony, labor disputes, or family matters).[98] The courts also provide, although quite limited in scope, legal consultations that are free of charge. However, one can argue that there are issues of accountability for such service and impartiality since eventually the cases may be brought to court. In addition, the offices of prosecutors, within their own framework of general supervision, work to mitigate problems related to the absence of free services in Slovakia; they provide free of charge legal advice to those who approach them. Finally, a few legal aid clinics based in the law faculties, funded by the Soros Foundation or other donors, have started to provide free legal advice in Slovakia.

In Slovakia today, the current system of free-of-charge and subsidized legal services is based on a framework set up before 1990. Limited state-provided services were both ineffective and inefficient. The social fabric in Slovakia today is different from the one that existed in 1990. The transition brought about a new market-oriented system, where the cost of legal services appears to make it difficult for people to access legal representation. However, further study is necessary to confirm this preliminary conclusion

The government should monitor and analyze the affordability of legal services in order to ensure that all citizens are afforded adequate access to justice. Financial affordability should be an integral element of the legal and judicial reform program.

[97] It should also be said that an appointed lawyer does not relieve defendants from their obligation to pay lawyers' fees. As mentioned, those defendants who lose their cases have to pay all the costs and expenses.

[98] Rekosh, Ed, and others. 2000. "Access to Justice: Legal Aid for the Underrepresented." In *Pursuing Public Interest: A Handbook for Legal Professionals and Activists*, eds,. Rekosh, Buchko, and Terzieva. New York: Columbia University Law School.

Conclusion

THE modernization of the Slovak judiciary and legal services sector is critical for accelerating and maintaining economic growth, addressing the critical needs of vulnerable groups, and increasing social cohesion and stability. The challenge faced by the government is to translate the growing political urgency for justice sector reform into a sound public policy focused on the needs of those affected by the justice sector's performance – its clients. This can be achieved via a set of well-targeted reforms aimed at improving the court performance and image and provision of non-court legal services.

The Slovak Government deserves a lot of credit for the technically and politically difficult reforms it was able to implement. These reforms include streamlining civil and criminal procedures, optimizing the allocation of court jurisdiction, strengthening the framework for alternative dispute resolution, improving the provision of legal information to judges and promoting the privatization of judgment execution that became a model for other countries despite its still lingering imperfections. One of the most successful judicial reform projects in the entire region was the introduction of random case assignment and automated file management that is replicated nation-wide.

However, despite these impressive achievements, the reputation of the justice sector remains one of inefficacy. The pace and effectiveness of reforms have been undermined by the lack of analytical and planning capacity resulting in (a) disconnects with broader institutional and policy environment; (b) internal program inconsistencies; (c) unjustified setbacks in the implementation of reform programs and (d) an atmosphere of continuous crisis management.

Those reform measures that were successful resulted mainly from outside pressure related to the EU accession, and the enthusiasm and courage of a few individuals rather than an educated and coordinated effort from the leaders. The decision makers have been relying on conventional wisdom and common sense that could not compensate for the lack of empirical analysis. Too much trust was given to imported models not tested in the Slovak conditions. The reform efforts have been complicated by politicization, fragmentation and animosity of the stakeholders. Too many players benefit from the deficiencies of the current system, at the expense of the clients who are defenseless against abuse.

The managers of the justice sector should concentrate on the reform process as much as they do on substantive issues. The procedural issues that require particular attention are: communication with the general public, involvement of stakeholders in strategy development and implementation, continuous updating of strategies by checking implementation status and re-confirming the hierarchy of objectives. The importance of applied research as a tool to support policy development should be fully recognized in Slovakia. There are promising signs that the new leadership is moving in this direction.

In order to overcome the policy vacuum in some critical areas of the justice sector, the MOJ should develop capacity in the areas of oversight over the legal services market and regulatory impact assessment. Clearly, these issues go beyond what is considered to be within the jurisdiction of the justice sector, and the MOJ needs to promote mechanisms for cooperation with other parts of the Executive and the Judiciary.

The World Bank justice sector program in Slovakia was initiated in the early 2000s at the government's request. At that time the main government's objective was to reduce corruption. It was agreed that since no analysis of the justice sector was available, the Bank assistance would start with a justice sector assessment. In parallel, the government and the Bank agreed to proceed with a $400,000 program financed by the Institutional Development Fund (IDF). As a Bank study suggested, corruption in the courts was directly associated with their insufficient productivity. Therefore, the IDF funded program was seeking to increase efficiency and effectiveness. The lack of a sound reform strategy and unusually strong antagonism among the key players were major obstacles to progress in justice sector reform. Thus, strengthening the capacity for strategic planning and consensus building became the main objectives of the IDF funded program.

Because of the government's skepticism about the benefits of any big planning exercise, the Bank agreed to prepare a set of discrete, focused reforms. Judicial sector statistics, budgeting, judicial maps, and the analysis of the legal services market were included in the Justice Sector Assessment. In addition, the Office of the Government requested assistance in strengthening legislative drafting capacity. The IDF program is under implementation.

After the 2002 election the Bank and the Government entered into discussions on a loan for justice sector reform, as it became clear that greater investments would be necessary in

order to meet the justice sector modernization objectives. As is being discussed, the loan could assist in the following areas: court and case management reform; integrated human resources management with an emphasis on training capacity; provision of legal services for underprivileged groups; and the strengthening of regulatory impact assessment capacity.