

Top lawyer: Some opportunities only come during revolutionary times

After the fall of the totalitarian regime, attorneys were used to taking care of all kinds of legal issues. Specialisation was unheard of and undesirable, yet David Soukeník and his partner Peter Štrpka decided it was the methodology they wanted to pursue.

One of the two founding partners of the Soukeník – Štrpka law firm that regularly places among the largest in Slovakia looks back at how the legal profession developed in Slovakia, along with the current pains of the judiciary.

TSS: Slovakia now marks 30 years since the fall of the totalitarian regime. How has your profession changed since then?

David Soukeník: I graduated from university in 1999, but I have been aware of the significant changes the Velvet Revolution brought. As for our profession, after the revolution the professional chambers were founded, first the Slovak Bar Association followed by the chamber of commercial lawyers, which later merged with the Slovak Bar Association. The break-up of Czechoslovakia was another significant milestone, after which many laws and institutions were made specifically for Slovakia, different from the Czechoslovak ones. A quarter century later, there is already a significant difference between Slovakia and Czechia in this respect. This opened the door to the foundation of new local offices.

TSS: Let's look at the development in Slovakia. You started your studies in Bratislava in 1993.

DS: As a student I started working in a law firm, owned by a married couple who were judges-turned-attorneys. Back then, the legal profession was still only being formed. Former prosecutors, judges, and company lawyers were the ones who went into the business. The standard was one, at most two attorneys working in a small office. They needed to handle everything, including penal law, civil law, and commercial law. Offices had a junior associate, a clerk and maybe a student. With Peter Štrpka we decided to provide legal services differently. We wanted to have a one-stop-shop company that would provide all kinds of legal services to our clients. We understood that if we wanted to provide a quality service, we had to specialise. We were therefore forced to recruit other lawyers at that time. Hence, we excluded penal law from our services, which was unheard of and unthinkable for old-fashioned attorneys. We focused on businesses and also serviced clients in the regions. We knew we did not have a history like the big global law firms, but we did not want to be a small two-person law firm limited to Bratislava. In a way we narrowed our world down to Slovakia, but we wanted to cater to all of Slovakia with our legal services.

TSS: The 2018 murder of a journalist in Slovakia triggered a process that has resulted in disturbing revelations about the Slovak justice system, including corruption at courts. How does this influence people's decision to go into legal professions? Do you feel worsened moods among people towards lawyers?

DS: Definitely. This concerns all the legal professions. A vast majority of top politicians are or were lawyers. Lawyers have been seen negatively for a long time, sometimes due to envy, but oftentimes lawyers themselves are the ones to be blamed for it. On the other hand, a smart young person needs to see these drawbacks as opportunities. When things don't work well, it means there is room for those who go into that profession to do it better. That may have been the motivation for me and Peter to go into law. However, I understand the negative attitudes towards lawyers might be off-putting. As I already mentioned, big law firms, where newcomers need to put their egos behind them and become part of a colossus, are becoming the trend. In a way we were lucky with the timing of the start of our career. Admittedly, if things worked here for all those decades before 1989 like they did in western Europe, my generation wouldn't have so many opportunities like we had. Some opportunities only come during revolutionary times.

TSS: Isn't the Slovak justice system going through revolutionary times once again, with all the misconduct surfacing at once?

DS: At the moment we cannot say how the situation will evolve. But there are signs that cleansing is possible. It's quite frustrating when people say that the whole judicial system is bad. I believe the suspicions concern a low percentage of all judges (most judges are decent and professionally competent). But the judges that were implicated damaged the reputation of their

whole profession. I'm glad judges at courts have reacted now, saying that the judiciary needs to deal with its black sheep. It is a start. Courts and the judicial profession are subject to self-governing, and they need to manage the cleansing process on their own terms.

Former president Andrej Kiska refused to prolong the pension age of judges, which I believe to be a good thing. The judiciary needs young blood, the generation of young yet sufficiently experienced people who can translate new trends into the justice system. Courts need to be chaired by people who can handle the excesses of individuals.

TSS: That's your generation of lawyers. Do you see the motivation, the drive among your colleagues to go into the judiciary, even under the current circumstances?

DS: Judge is a prestigious profession, albeit its reputation is somewhat shaken at the moment. People who have the ambition to climb to the top consider judge to be the most prestigious among legal professions. It is often the case in western countries that attorneys who have reached all of their career goals want to become judges. The trend is also apparent here; just look at the selection of candidates for the Constitutional Court. Attorneys were among the candidates and some of them were successful. The judicial system is quite closed, though. Selection procedures are open only when a judge retires or leaves for some other reasons. Many lawyers still apply for these few vacancies, despite the things that have happened.



Source: Courtesy of Souleňnik-Srpká, s.r.o.

TSS: What happened is that some judges have apparently been involved with what we can call the mafia. Was it the system that went wrong, was it set up incorrectly from the start, or were they just individual failures?

DS: There are two levels: the independence of judges with regard to their communication with attorneys, and outright bribery. The latter – issuing rulings for bribes – is a crime that falls on the heads of the individuals who have engaged in it. If there was a better way to control the decision-making of judges, it would be easier to identify, and it would appear continually, not only when huge scandals surface like now. We have made a lot of progress concerning the publishing of court rulings, but there are still gaps in the

scope and the way decisions are published, which does not allow the public to keep an eye on individual judges. If a judge rules in one way in three similar cases and then suddenly issues a completely different ruling in another such case, that seems suspicious and potentially corrupt. Transparent publication of the decisions, which would allow for the public to easily find all the decisions of the respective judge, would significantly contribute to better public control of judges.

The relationship between a judge and an attorney is quite problematic. It is a question of ethics, and it is something that needs to be handled by judges and attorneys themselves. Based on the code of ethics of the Slovak Bar Association, personal communication about the pending case with a judge

who decides on the pending case the attorney is involved in may be a disciplinary offence. But judges cannot live in a bubble and never meet with anybody. It is completely acceptable that judges and attorneys mingle at social events or social lunches from time to time. But the judges need to have the integrity to be able to assess their conflicts of interests. Certainly, it would be good, as is common in arbitrations and abroad, if judges performed impartiality tests, when, on the basis of standardised questions, they evaluate their attitude toward the matter, the participants or to their legal representative. Attorneys should also point out their own, even positive, bias in relation to the judge hearing the case, and if this happens, the judge should be excluded from the case.

TSS: What are the main concerns the foreign businesses operating or wishing to operate in Slovakia voice when they approach your firm to assist with their business?

DS: They worry about the poor enforceability of the law and the unpredictability of rulings. It might not affect their business in general, but once they are involved in a lawsuit, suddenly trouble may arise. As lawyers, we prefer to get a ruling that we are unsatisfied with but know is consistent. The worst thing is when you have to tell your client: I have no idea how this is going to end. What is more, different courts have different opinions on some legal issues. A court in Prešov might rule differently than a court in Banská Bystrica on the same issue. Judges should unify their legal opinions around the country. That, of course, is the Supreme Court's job, but some issues cannot be appealed at the Supreme Court. It might be things that are not even legally complicated, like a distraintment case that some courts allow, whereas others based on the same legal titles don't.

TSS: Procrastination in courts was one thing that was often mentioned by foreign businesses as a problem. Have things improved in this area over the years?

DS: The new Civil Litigation Procedure Code that has been effective since 2016 still has some flaws and requires a more comprehensive amendment. However, the fact is that the speed of court proceedings initiated after 2016 has increased. Courts are rather burdened by the long-delayed suits instituted before 2016. We, too, have lawsuits that are 10 years old, and the judges are not really motivated to deal with them.

By Michaela Terenzani