

# First steps towards renewing public trust in the judiciary



**MÁRIA KOLÍKOVÁ**  
Minister of Justice of the  
Slovak Republic



Rule of law has been among AmCham's key pillars for a while and the Rule of Law Initiative remains very active in voicing the concerns and suggestions of the business community regarding improvements in this area. The reform plan introduced by the Minister of Justice of the Slovak Republic Mária Kolíková gives reason for hope and has raised expectations for a positive change. Her task is not an easy one but she seems more than determined to meet the challenges.

The issue of rule of law was one of the key issues during the pre-election campaign and the new government has subsequently prepared an ambitious program in this area. What are your top three priorities as a Minister of Justice?

Three goals are not enough for me. If you allow, I will mention at least four. The first one is the reform of the Judicial Council to make it capable to be a genuine mirror to the judicial system. The second is the establishment of the Supreme Administrative Court that will also serve as a disciplinary court for all legal professions. The third one is a more efficient seizure of assets (confiscations) and the creation of a new office for the administration of the seized property. The fourth is a new court map. We would like to re-draw existing court districts and thus allow better specialization of judges. I perceive this also as a very important step towards better random assignment of cases and towards speeding up court decision-making. However, there is another important angle. Since the judges with specific expertise will work 'under one roof' so to speak, we envision that they will engage more often in expert discussions, which could cultivate their legal reasoning in individual cases. The business community perceives this as a very important step towards better predictability of future court decisions.

Before the outbreak of the pandemic, the Slovak economy has experienced a period of stable growth over the past

few years. However, with few exceptions, this has not translated into much needed significant improvements in the rule of law. What do you think are the reasons?

I do not see a link here. Why the economic growth should inevitably lead to significant improvements in the rule of law? I think that there is a different sequence. Better rule of law standards and, most importantly, more efficient institutions designed to ensure the rule of law or legal protection are the factors which could (and should) have a positive impact on economic growth.

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Otherwise they have different roles. Economics is driven mostly by the private sector. The rule of law is more about the law enforcement and functioning of the state institutions. Although, if working properly, it also helps to create better business environment and thus helps the economy. The biggest challenge is to make such changes, which would ameliorate the functioning of state institutions.

Where do we lag behind the most compared to EU standards?

This is an interesting question. I am fully aware of the complaints about the length of court proceedings, which I have to acknowledge. After all, one of the key objectives of our reforms is an improvement of the quality of the decision-making and elimination of the delays in the court proceedings. On the other hand, it has to be said that the delays are not symptomatic to all courts; or rather not all courts contribute to a bad reputation of the judicial system regarding these delays. As you know, we have been working with the European Commission for Efficiency of Justice (CEPEJ) for some time in order to reform the Slovak justice system. We want to achieve greater efficiency measured by data, which are collected by the CEPEJ and which are made public also via the EU Justice Scoreboard.

A few years ago, we harmonized the methodology of the data collection with the European standards. As a result, new Slovak statistics indicate that in terms of the disposition time (estimated length of court proceedings) we are a better average among the EU member states. The lengthy court proceedings are caused mostly by the existing backlog of old cases and not by insufficient efficiency of courts. Nevertheless, where we really do lag behind are the polls on the perception of the independence of the justice system. Apparently, we are at the very bottom and it seems to be our most pressing problem. The mistrust in judiciary undermines everything. I am of the view that

## BIOGRAPHY

### PROFESSIONAL CAREER

- Minister of Justice of the Slovak Republic (2020 - present)
- Managing Partner at law firm Kolíková & Partners (2018-2020)
- State Secretary, Ministry of Justice of the Slovak Republic (2016 - 2018)
- Managing Partner at law firm Kolíková & Partners (2012 - 2016)
- External Advisor to the Minister of Justice of the Czech Republic (judicial reforms) (2012 - 2012)
- State Secretary, Ministry of Justice of the Slovak Republic (2010 - 2012)
- Managing Partner at law firm Mária Kolíková (2007 - 2010)
- Director of the Centre for Legal Aid (2006)
- Advocate (2003 - present)
- Trainee advocate (1999 - 2002)

### OTHER

- lecturer at the Department of Constitutional Law, Faculty of Law, Trnava University (2007 - 2010)
- Founder and lecturer, Law Clinic for Community, Faculty of Law, Trnava University (2001 - 2005)
- Spring and summer schools for law students (human rights) (1998 - 2002)
- Lecturer in human rights projects, Citizen and Democracy (NGO) (1997 - 2005)

### EDUCATION

- Faculty of Law, Comenius University in Bratislava (1993-1999)

if people had more confidence in the court system as such it would be easier for them to accept the fact that certain proceedings could take more time. Some proceedings will simply always take longer. This is a critical issue since without a public trust in courts we cannot build optimal relation between a citizen and a judiciary. Consequently, people will not have full confidence even in decisions which are fair and just.

**Before the parliamentary elections, AmCham together with 13 partner business associations from the Rule of Law Initiative prepared a set of recommendations “10 Commandments for Fair and Predictable Business Environment”. These focused on improving the legislative process, eliminating space for corrupt behavior as well as making the judiciary more predictable. How do you perceive the concerns voiced by the business community regarding the rule of law?**

I fully understand them. In response to your previous question I suggested that the biggest problem is the perception of the judicial independence and a low credibility of the rule of law in Slovakia. I recognize that the predictability of the legislative process and the predictability of the judicial decision-making are economic factors that entrepreneurs have to take into account and include in their equations. This is one of the reasons why we want to work and why we work on our reforms.

**Despite the legislative rules being relatively good at the governmental level, AmCham as well as several major business associations often point to the unpredictability of legislative changes at the parliamentary level. While respecting the division of power between the government and the parliament, how do you plan to leverage your position of Justice Minister to bring more predictability into parliamentary legislative process?**

I would like to bring to your attention one significant change - we abolished the exception adopted by the former government, which allowed MPs' legislative proposals to bypass standard consultative process. This measure should help to strengthen the predictability of the legislative process and to raise the quality of the legislation through engaging and allowing comments from the business community. However, it would be ideal if the MPs' proposals went through standard legislative process. However, to achieve this, the Parliament would have to change its parliamentary Rules of Procedure.

**Several of the recommendations from the wider business community are directly related to the agenda of the Ministry of**

**Justice. Businesses have for long voiced their concerns about the length of court proceedings. What improvements do you expect to implement in the near future?**

I have mentioned this earlier. We are working on the reform of the court map which we would like to start implementing next year. This goes hand in hand with deepening the expertise of the judges in their main areas of responsibility and, consequently, more efficient allocation of cases. I perceive this also as an important tool with regard to the delays in the court proceedings.

**What could the businesses do? They should not tolerate corruption and nepotism.**

**When an approved legislation is later declared as contradictory to the Constitution, it is not possible to claim retroactive compensation for damage or damage that occurred during the duration of the law. Business associations (in their “10 Commandments”) called for a fixed limit for resolution or compulsory postponement of the law if no decision on the matter is made within the fixed time limit by the Constitutional Court. How do you plan to address these concerns?**

I understand that it is in the interest of business entities that the court decisions, including the decisions of the Constitutional Court, are made in reasonable time. With regard to the Constitutional Court, it is necessary to avoid the situation when so many seats are vacated for such a long period of time as we witnessed in the past. We are introducing a mechanism in the proposed constitutional amendment thanks to which the outgoing judge would stay in office until his/her replacement has been appointed. If courts are not able to make decisions in a reasonable time, we need to address the causes. In case of the Constitutional Court, it was especially a long period of time during which many of its seats were not occupied. At the same time it should be considered what type of cases should really fall within its jurisdiction. In the proposed constitutional amendment, we seek to ‘unburden’ the Constitutional Court by shifting some of its powers to a newly established Supreme Administrative Court. In this context, the cases related to the delays in the court proceedings are a huge burden for the Constitutional Court. We should discuss whether these cases should remain within its

remit. I believe that the proposed changes could improve the efficiency of its work and accelerate its decision-making.

**Commercial arbitration is a respected and efficient alternative for businesses to solve their disputes in many EU member states. How does the Ministry of Justice plan to support commercial arbitration in Slovakia over the next few years?**

Yes, I agree that commercial arbitration is a highly respected and effective alternative for businesses. Nevertheless, I am not sure about the role of the Ministry of Justice in this respect. I believe that the key role could be played by chambers which have established arbitration tribunals, e.g. the Slovak Chamber of Commerce and Industry or, most recently, the Slovak Bar Association. At the end of the day, I think it is the quality of arbiters offered by those arbitration tribunals which are crucial for gaining sufficient reputation that is needed to compete with e.g. the arbitration tribunal in Vienna which is the choice of some Slovak entrepreneurs. For these reasons, I am of the view that this is less a challenge for the Ministry of Justice and more for arbitration tribunals and Chambers (their founders) who are expected to offer sufficient quality of their arbitrators to make these tribunals more attractive.

**AmCham is one of the drivers of the Rule of Law Initiative – a coalition of 14 business associations that continuously push for much needed improvements in rule of law. How do you envision your cooperation with the business community in improving the rule of law in Slovakia during your term as a minister?**

I hold the activities of AmCham Slovakia in high esteem. The external pressure has its importance. First of all, we want to maintain an open communication. We want to keep an ongoing formal and informal dialogue with the business community with regard to draft legislation with potential impact on the business environment. And this is what we already do. The first example is the draft law on temporary protection of viable businesses

which aims to protect the business environment. I know that my colleagues have intensively communicated, both informally and formally, with the representatives of the affected business community.

**What could, in your opinion, the businesses do on their part to contribute to improvements in rule of law in Slovakia?**

What should the businesses do? They should not tolerate corruption and nepotism. And when they are confronted with such behavior, they should simply inform competent authorities. This is crucial. There is a lot of gossip about corruption and nepotism schemes, including in the court system. However, these schemes have their clients on the other side of the system. In recent days, we have closely followed the operation ‘Storm’ and learnt of the suspicions of corruptive behavior of certain judges which has seriously damaged the image of the Slovak judicial system as a whole. Although we heard similar stories in the past, we need evidence for criminal proceedings to start.

**Renewing citizens’ trust in the state and the legal system is among the government’s priorities. What path have you chosen to achieve this challenging goal? What else will need to change in the Slovak society to change the public’s trust and perception?**

Most importantly, the affairs that traumatize the Slovak society need to be fully investigated. Secondly, it is extremely important that people, who seek justice, are given judicial decisions which they understand and that these decisions are given in a reasonable time. This relates to measures I have already mentioned.

**What is the most important goal you would like to achieve as a Minister of Justice?**

To renew public trust in the judiciary. However, this is not an aim in itself. I want to do it through measures which, by their design, will contribute to timely decisions that are at the same time of higher quality. I wish that people start to believe that the justice is here for everyone without exceptions.

