

HUNGARY

Hungarian Bar Association

2009 was again a busy year for Hungarian lawyers. Many significant changes took place as the Hungarian legal profession adapts more and more to the challenges of the 21st century. On top of the several important international meetings held and the introduction of new devices and systems supporting lawyers' work, here is a short description of the most important events of the past twelve months in the life of Hungarian lawyers.

1. Hungarian Bar Association remains active in the most important international legal organizations, CCBE, IBA and UIA

The Hungarian Bar Association remained active in the CCBE: Dr. Peter Köves was appointed as chair of the Multidisciplinary Law Firms Committee, while Dr. András Szecskay, head of the Hungarian CCBE delegation, continues to lead the Working Group on Co-operation in Disciplinary Matters. Together with Dr. Peter S. Szabó he is also working on the preparation of a report on the experience in cross-border disciplinary matters under the Establishment Directive in view of its contemplated revision in 2011. Dr. Peter S. Szabó is member of the Committee preparing the CCBE comments to the draft of European Authentic Act. The Hungarian Delegation to the CCBE grew when Dr. Gabriella Wellmann was appointed as Brussels representative.

The representatives of both the Hungarian Bar Association and the Budapest Bar Association attended the IBA 2009 Annual Conference in Madrid, and the UIA 2009 Annual Congress in Seville, along with the many other events of these organizations.

2. AIJA Annual Congress in Budapest

In recognition of the enthusiastic organizational work of its Hungarian members, AIJA held its 47th Annual Congress in Budapest in August 2009, which was attended by more than 500 lawyers from Europe and overseas. The professional program, as well as the so-called '*Home Hospitality*' program hosted by local Hungarian lawyers was a great success.

3. UAE Annual General Meeting in Budapest

The European Lawyers' Union (Union des Avocats Européens - "UAE") held its Annual General Meeting in Budapest on November 21, 2009. The AGM of UAE was preceded by an international conference on "*Electronic procedures in Europe*" organized jointly by UAE, the Budapest Bar Association and the Faculty of Law and Political Sciences of Pázmány Péter Catholic University on November 20, 2009. Following the AGM, the executive committee elected Dr. Attila Jásdi, member of Budapest Bar Association as First Vice President of the UAE.

4. 2nd Lawyers' Day since the regime change

After many years of silence, the *Lawyers' Day* was re-introduced and held with great success in Budapest in 2008, which was followed in November 2009 by the second Lawyers' Day, again with great success. This year Dr. András Baka, President of the Supreme Court of the Republic of Hungary, was invited as honorary guest speaker. President Baka spoke about the mutual efforts for improving the relationship between the judiciary and lawyers, and the quality of legal services. At the opening ceremony, Dr. Alajos Dornbach and Dr. Imre Kónya, both practicing lawyers, spoke about the so-called '*Round Table*' negotiations about the political changes in Hungary in 1989, which they attended and both played a significant role in.

5. Continued participation in the Penalnet Program

Lead by the Spanish Bar Association (CGAE), five European bars united to create a test platform for the confidential and safe electronic exchange of information for lawyers, all with support from the European Union. This innovative system, to be used for the time being by criminal lawyers, provides fast and secure access to lawyers from several jurisdictions for situations where urgent advice or the exchange of documents or professional conversation is required. Lawyers are able to contact other colleagues practising in a given field of law from a distance, thereby making it much easier and more efficient to protect foreign clients, or local clients in a foreign country.

With co-operation from the French, Romanian, Italian, Spanish and Hungarian Bar Associations, the Penalnet Program is progressing well and appears to be promising. Participants foresee that the system may soon become a new platform used by all lawyers across Europe.

6. Participation in CCBE's '*Find-A-Lawyer*' Project

The Hungarian and Budapest Bar Associations are participating in a project where the CCBE has applied for funding from the European Commission for the development of a Find-A-Lawyer search system. The European Commission is expected to make its decision in February/March 2010. The CCBE and the participating selected bar associations are currently working hard to ensure that the project team is prepared to hit the ground running and begin the project within the planned time-frame, subject to the Commission's positive decision.

7. Electronic company registration proceeding and electronic publication of financial reports

As the beginning of a new era, online company registration became available as an option in Hungary for the first time from 1 July 2006. From 1 July 2008, all Hungarian lawyers received their own electronic signature, paving the way for making online company registration a mandatory and exclusive way of bringing new companies to life. It is now possible to establish a new company in this way in no more than one hour, which enables lawyers to provide fantastically fast and efficient services for clients.

Parallely with the above steps in the company registration procedure, companies shall publish they financial reports (annual reports, simplified annual reports etc.) electronically.

8. 1st instance judgment in the lawsuit challenging the decision of the Competition Office

In 2004, right after Hungary joined the European Union, the Hungarian Competition Office launched a lawsuit against the Hungarian Bar Association alleging that certain provisions of the Code of Conduct for Hungarian lawyers (mainly the arguably restrictive regulations on the advertisements by lawyers) are prohibited and unlawful regulations that restrict competition among lawyers. The Competition Office's decision nullified certain provisions of the Code of Conduct and imposed a fine on the Hungarian Bar Association for competition-distorting behaviour. After many years of court proceedings the Metropolitan Court honoured some of the Bar's arguments (mostly based on the expectation for respect of the core principles of the legal profession) and partly changed the Competition Office's decision in favour of the Bar. Finally, the Metropolitan Court also released the Bar from the obligation to pay the fine. The 1st instance judgment has been appealed by both the Bar and the Competition Office and the final decision can be expected in 2010. In its appeal the Hungarian Bar Association refers to ECJ precedents regarding the involvement of the state in controlling and supervising the mandatory regulations of the Hungarian Bar Association, which is also the case in Hungary.

Due to the ongoing procedure and also in order to be up-to-date with European and national requirements, in particular with competition laws and the Services Directive, the Code of Conduct has been amended and as a result, the *Charter of core principles of the European legal profession* adopted by the CCBE on 24 November 2006 is now also part of the modified Code of Conduct to secure the fundamental core principles of the legal profession.

9. Preliminary ruling pending before the Court of Justice of the European Union

A German citizen Rechtsanwalt has filed a claim against the Budapest Bar Association in which he asked the court to declare that he is entitled to use the title 'ügyvéd' (Hungarian term for lawyer) in Hungary without being a member of Budapest Bar Association. The plaintiff has been living in Hungary since the end of the '90s; he is a member of the Bar Association of Düsseldorf and has the right to practice as a lawyer under the professional title 'Rechtsanwalt' (RA) within the jurisdiction of the County Court of Duisburg and the Court of Appeal of Duisburg.

The plaintiff argued that because Hungary has failed to implement Directive 89/48/EEC, Hungarian national law therefore does not provide him any opportunity to use this title without being admitted to the Hungarian bar. In his view, the referred directive and particularly Articles 3 and 8 thereof have direct effect due to the lack of implementation. He also claimed that, following from the direct effect of Article 8, he had the right to start litigation four months after he had applied for the recognition of his certificate. He further claimed that because there was no decision on his application and the directive had not been implemented (and therefore, Article 4,

which allows Member States to require the applicant to complete an adaptation period or to take an aptitude test had not been implemented to national law either), the host state has to recognize his certificates issued in Germany allowing him to use the title '*Rechtsanwalt*' without requiring the completion of an adaptation period or aptitude test. Consequently, he is also entitled to use the title '*ügyvéd*', the professional title of the host country.

The court suspended the trial until the Court of Justice of the European Union gives its preliminary ruling (C-359/09).

The Budapest Bar Association considers this litigation high priority due to the fact that an eventual decision in favor of the plaintiff would have serious and detrimental consequences on the legal profession.

It must be emphasized that Mag. lic. Robert Koller, an Austrian citizen, also submitted a very similar claim against the Rechtsanwaltsprüfungscommission beim Oberlandesgericht Graz. The Oberste Berufungs- und Disciplinarkommission also suspended this trial until the Court of Justice of the European Union gives its preliminary ruling (C-118/09.)

Due to the fact that the above mentioned preliminary rulings (C-359/09 and C118/09) are closely connected and highly affect the profession of attorneys it may be useful for the Bar Association to cooperate and therefore facilitate favourable preliminary rulings on this subject matter.