

COUNTRY REPORT - SLOVENIA

Slovenian Bar Association

In 2012, the Slovenian legal profession found itself in one of the most difficult situations in its history – something it had not faced even during the so-called “years of lead”. The state wished to strip the Slovenian Bar Association of its jurisdictions by abolishing mandatory membership.

The Slovenian coalition parties in their political contract have committed that they will abolish the mandatory membership in the Slovenian Bar Association (hereinafter SBA) and transfer certain competencies of the SBA to the state bodies (deciding on the entry/ deletion to the Register of Lawyers and Register of Trainee Lawyers and conducting the disciplinary proceedings against the members of the SBA) unless the lawyers decide otherwise.

The Bar Association received a letter by the Ministry of Justice and Public Administration of the Republic of Slovenia, from which it follows that they will do an analysis, on which they will assess the need for any changes in the functioning of the chambers (mandatory or voluntary membership, granting or withdrawal of public power, the adequacy of control), particularly their impact on the reduction and elimination of administrative barriers and burdens and simplify procedures. In connection with this analysis we have been asked for statistical data (e.g. the total number of members, amount of registration fee, how many requests for the introduction of disciplinary proceedings were filed,...). We have also been asked to do the questionnaire survey among lawyers about the obligatory membership.

All regional assemblies of Slovenian lawyers have submitted the same answer to the Bar, i.e. that they are against such an encroachment by the state against the autonomy and independence of the legal profession.

The realization of the mentioned ideas would represent a significant intervention in the autonomy and independence of the Slovenian Bar.

Such a decision would transfer the jurisdiction over decisions on admission to the Bar and disbarring, decisions in disciplinary procedures and decisions on when and how lawyers, candidate lawyers and trainee lawyers will be involved in education to the state.

If the executive branch of power assumed the decision-making on the right to perform the legal profession, this would mean that lawyers would be completely subordinate to the executive branch of power and thus dependent on the state. This would represent an encroachment on the fundamental principle and mission of the legal profession, i.e. the client's trust in the lawyer's work and the client's trust that the lawyer will represent its legal interests and protect its rights to the best of his or her abilities.

In Slovenia, the legal profession has been autonomous and independent since 1868. The available sources of information show that the desire to abolish the autonomy and independence of the legal profession has never before been so strong nor has that desire ever been based solely on documents that have merely political value (coalition contract). The abolishing of mandatory membership and

thus transferring jurisdictions to the state would unfortunately lead us back to the times of our country's greatest poet Dr France Prešeren, who asked to be admitted to the Bar five times in 13 years, only to finally become a lawyer in Kranj on 1 September 1846.

In light of this pressing issue, the Administrative Board of the Slovenian Bar Association adopted the Resolution on the Autonomy and Independence of the Legal Profession. The Resolution on the Autonomy and Independence of the Legal Profession was signed on 28 September 2012 at the Slovene Lawyers' Day. The Resolution was signed by all participants of the Slovene Lawyers' Day: the CCBCE, the Bar Associations of France, Germany, the Slovak Republic, the Czech Republic, Hungary, Croatia, Vojvodina, the Federation of Bosnia and Herzegovina, the Republika Srpska, Serbia, Macedonia, Montenegro and by the Munich Bar Association, the Paris Bar Association and the Regional Bar Association of Trento from Italy.

Due to the importance of this issue, the adopted text of the Resolution is attached.

Please allow us to note that we have not yet received any responses to our opposition by the state. The state has also not yet implemented any additional activities in this regard.

RESOLUTION ADOPTED AT THE SLOVENE LAWYERS' DAY

Portorož 28 September 2012

The representatives of the bars and lawyers' associations as participants of the Slovene Lawyers' Day that was organised in Portorož on 28 September 2012 hereby adopt the following resolution:

AUTONOMY AND INDEPENDENCE OF THE LEGAL PROFESSION AS AN ESSENTIAL CONDITION FOR THE RULE OF LAW

The signatories

- hereby emphasise that each country has to provide its citizens and other residents efficient protection of human rights and fundamental freedoms, fairness of the proceedings of its bodies and faith in the system of protection of human rights and fundamental freedoms in full;
- hereby emphasise that autonomy and independence of the legal profession is one of the essential conditions for ensuring the trust of citizens and other residents and for the realisation of the rule of law and the legal state;
- hereby emphasise that (a) abolishing mandatory membership in independent bars and thus transferring the jurisdiction of decisions on who can become a lawyer and when to the state; (b) giving the right to the state as to whether someone can perform the legal profession; and (c) the state encroaching on the financial independence of the legal profession; represent a legal and factual encroachment on the autonomy and independence of the legal profession.

The signatories

hereby state that we shall do all that is necessary to preserve the autonomy and independence of the legal profession

and

hereby call upon countries to provide and ensure autonomy and independence of the legal profession.

Portorož, 28 September 2012