



## **2015 REPORT BY THE CROATIAN BAR ASSOCIATION**

The legal profession has been faced with major changes for some time now. These changes include economic changes - as regards clients' purchasing power, political changes - concerning the relations of the legislative, judicial and executive powers in respect of the legal profession, technology and security changes - in terms of the communication with clients, judicial and other authorities and, consequently, the need for protection of the client-lawyer privilege as one of the essential foundations of our profession and the protection of human rights and freedoms of citizens.

All these changes affect the legal profession both the daily business and also its future.

As a profession we spoke about all these issues, which are stated in particular in the letter of CCBE President Ms. Marie Šlázak of October 2015, that was sent to the presidents of all bar associations members of the CCBE.

On 28 October 2015 the European Commission presented the Single Market Strategy for goods and services, which prompted the CCBE President to send the aforementioned letter.

The Croatian Bar Association had already been faced with such problems as mentioned by CCBE President and contained in the Single Market Strategy. Hence, in early May 2015 during the visit of the representatives of the European Commission to Croatia, also representatives of the Croatian Bar Association were invited to the talks. From the talks held it arose that the legal profession is treated by the European Commission as any other commercial and service industry and that therefore the same principles relating to entrepreneurship equally apply to the legal profession. The Croatian Bar Association cannot accept such a way of thinking since the service of lawyers is a constitutional category as stipulated by Section 27 of the Croatian Constitution in the Chapter of the Constitution which concerns the protection of fundamental human rights and freedoms.

It is precisely for that reason that the Constitutional Court took the view in one of its decisions in 2000 stating that the purpose and objective of the legal profession is primarily to provide legal assistance to those who need it, and that legal assistance - being strictly defined as the

profession of lawyers- is an essential element in guaranteeing legal certainty, democracy and the rule of law in the Republic of Croatia. Furthermore, and what is most important that the legal profession is one of the aspects of the performance of the judiciary, and it is not a classical economic activity of providing services. In addition, in the aforementioned Decision the Constitutional Court stated that the provision of legal assistance by the legal profession cannot be understood as an economic activity and because of its specificity it can neither be subject to the laws of supply and demand on the market. Moreover, based on the specific rules governing the profession the position of the legal profession significantly differs from the position of economic activities in the market.

European Commission representatives were, of course, of a completely different view, relying on the provisions of Directive 2006/123 / EC on services in the internal market, but failed to take into account the earlier positions of the European Commission that the regulation of professional services is necessary because by performing such services good and values are realized which are of great importance for society as a whole. It is exactly with the regulation of the legal profession as an independent service that the efficiency of the judiciary is affected, the protection of fundamental human rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, it is obvious that the legal profession provides services of general interest.

The efforts made to urgently deregulate legal services, introduce liberalization, competition, etc. and considering the legal profession as a market activity are increasingly concerning, and this in particular when taking into account the current regulations.

Section 17 of the normative part of the Services Directive in the Internal Market stipulates that the provisions of Section 16 of the Directive shall not apply to matters regulated by Directive 77/249 / EEC of 22 March 1977 on the freedom of efficient delivery of legal services. From this it arises that the most part of the Directive on services in the internal market does not apply to legal services.

Such a position is confirmed by the provision in item 8 of the Preamble of that Directive, which provides that the Directive applies only to the extent to which certain activities are open to competition, whereas item 70 of the Preamble stipulates that services can be deemed services of general interest only if particular tasks are performed by them which are in the public interest and which the specific Member States entrusted to the service provider. This definition is mentioned, *mutatis mutandis*, also in item 71 of the Preamble to the Directive.

Point 43 of the preamble to the Directive on regulated professions and the recognition of professional qualifications stipulates that it covers freelancers if they are regulated by law and if such professions are performed in the interest of the client and the public, and this in person and on the basis of relevant professional qualifications, which is why such performance of the profession in a given Member States may be restricted in a certain sense by national legislation.

It is fully clear that the legal profession is a regulated one and that appropriate professional qualifications are required to perform it, as provided in the provisions of item 88 of the introductory part of the Services Directive in the internal market, which stipulates that the provisions on the freedom to provide services do not apply to such cases when under Community law certain activities in a Member State are restricted for a profession, as for

example the requirement whereby the provision of legal counseling is restricted to lawyers only.

It is absolutely clear that law cannot be practiced on a voluntary principles because it is a profession that must be performed with full responsibility. The protection of the rights of clients, and almost always it is about the protection of fundamental human rights and freedoms, depends on the expertise of lawyers, their responsibility and the respect of ethical principles of the legal profession.

The basic human rights and freedoms are the cornerstone of any country ruled by law and of the rule of law as such, so that the effective, professional and ethical protection of such rights by the legal profession is aimed at protecting the rule of law and democracy. Nobody has the right whatsoever to call into question the protection of human rights and freedoms, and the rule of law for some economic reasons and interests.

We can conclude that the legal profession is a special form of the judiciary and an essential element of legal certainty and the rule of law, and that it is not economic activity and therefore it cannot be subject to the traditional laws of supply and demand in the market and therefore the position of lawyers differs from the position of economic activities in the market.

The given theses have been confirmed by two surveys conducted within the CCBE, i.e. one research conducted by prof. George Yarrow and Christopher Decker, and another research conducted by Henrik Balleby Ockholm.

These researches showed that the legal profession is closely related to the legal system. In order for the legal profession to be effective, it is necessary that lawyers be adequately trained in the first place and have the appropriate professional knowledge and practice in order to respond to the tasks they are given. The integrity of the profession, professional conduct, independence from outside influences, including the influence of the state, mark the nature of the legal profession. In assessing the legal profession the relationship between the legal system and the implementation of economic measures should be taken into account, as well as the fundamental differences between the legal profession and other professions, and possible reforms that could affect the quality and quantity of legal services require a careful assessment of the conceptual and analytical framework for the implementation of such reforms. Serious reasons exist for avoiding the classical economic approach in relation to legal services. The aforementioned researches show that the comparative studies used in relation to the legal profession are of poor quality because they are neither consistent nor standardized.

In relation to the analysis of competition in the legal profession Henrik Balleby Ockholm believes that the current situation is satisfactory and that there is no indication of weak competition with regard to legal services. The users of legal services primarily emphasize the quality problem, not the problem of the cost of services. He therefore considers that a further liberalization of legal services will most likely not lead to a significant reduction of the prices of legal services, but could lead to a weakening of the quality of these services, which would primarily harm clients. Henrik Balleby Ockholm also believes that it is in the interests of users of legal services - consumers - that lawyers be independent, so that they are able to

provide to clients (consumers - as referred to by European legislation) access to justice and contribute to the improvement of the rule of law and of society.

The aforementioned author also refers to the modification of the provisions on the ownership of law firms and considers that such a modification could jeopardize the independence of lawyers, which would harm the users of legal services because they could not be sure that lawyers represent solely and exclusively their interests. Such an approach could also lead to a lower level in the quality of legal services, and that would harm society as a whole. This risk is particularly pronounced in the case of foreign owners of law firms, i.e. owners who are not lawyers. The author also believes that the abolition of monopolies of lawyers in respect of representation in court will not boost competition. On the contrary, such a change would lead to poor representation if clients were represented by consultants who do not have enough practice and knowledge, which would lead to significant economic losses because disputes would be resolved more slowly, which of course causes higher costs.

In the aforementioned Directive on services in the internal market, item 97 of the introductory part stipulates that rules should be foreseen on the high quality of services, and that these rules should apply both to the case of the cross-border provision of services between Member States, and to the case of services provided by a provider established in the same Member State. The provisions of Sections 114 and 115 of the Services Directive lay down that Member States should encourage professional bodies, organizations and associations, to draw up Community-wide codes of conduct in accordance with the specific nature of each profession. Codes of conduct for regulated professions must be such as to ensure independence, impartiality and professional secrecy.

It is an essential right of European lawyers to provide legal services in any EU member state. This right shall be subject to certain principles, especially those which have always been important for the legal profession. Such rights include the independence of performing the legal profession, a confidential relationship with the client, the right of association in a free and independent professional lawyer's organization, and the right of a professional organization of lawyers to decide on the acquisition and termination of the right to practice law. This is the foundation of the independence of the legal profession.

The future of the legal profession lies in the hands of us lawyers and our professional organizations. It is in the interest of the legal profession, but also in the interest of strengthening the rule of law and the protection of human rights and freedoms, that the regulation of the legal profession have as little economic impact as possible, and as much professionalism, responsibility and self-regulation as possible. The Croatian Bar Association (hereinafter: CBA) replied to CCBE President Mary Ślązak, by a letter of 18 November 2015, in which it welcomes CCBE's activities regarding the future of the provision of legal services, stressing that this is a topic of vital importance for lawyers, but also for the preservation and development of democracy in Europe. The CBA believes that European legislators and courts lack the understanding of the foundations of the legal profession and the ways to practice law, and that the loss of independence as a self-regulating profession would be detrimental not only for lawyers but also for clients, because only an autonomous and independent lawyer may guarantee the realization of the rights of clients and the last barrier against the arbitrariness of the state. The CBA proposes to reinforce the activities of the CCBE and of all bar associations to include the legal profession into the constitutions of such EU member states where this is not the case, as well as in the Treaty on European Union and the Treaty on

the Functioning of the EU. The CBA further proposes an increased activity through the mass media for a rational and reasoned informing of the public about the reasons for the existence of an independent and self-regulating legal profession, as well as the reasons why the legal profession should not be equated to classical economic activities. The CBA welcomes the initiative of CCBE President on holding a conference on the future of the legal profession in 2016.

The year 2015 was not only characterized by the problems of the legal profession as regards the Single Market strategy for goods and services of the European Commission. In Croatia, the year 2015 was marked by the reform of the courts in Croatia. The number of courts has been significantly reduced, as required by the European Commission, which has led to many problems in the work of a lawyer and to the right to access to justice. Before this reform, almost every major town in the Republic of Croatia had a first-instance court (trial court). e to the abolition of most of these courts clients and lawyers are forced to sometimes long journeys to attend a trial, which increases the costs of the clients themselves and extends the length of court proceedings. During the reorganization of the courts, the rationalization of justice was discussed. The rationalization has been achieved (if so) only in respect of the costs allocated from the state budget for the courts, because in the abolished courts there is no longer a president of the court and no accompanying divisions, considering that these courts have become now only separated and permanent divisions of larger courts. On the other hand, due to such an approach to the rationalization of the courts, the costs of clients have increased as their right of access to court has been aggravated, which means that their access to justice has been made more difficult.

By amending the Act on Courts the possible choice of a lawyer for the position of judge has been made easier by repealing the provision providing that lawyers must complete the State School for Judicial Officials if they want to compete for the position of judge. However, the provision stipulating that lawyers must pass the final exam at the State School for Judicial Officials has been retained. On the other hand, a lawyer with 20 years or more of practice, may be appointed judge of the Supreme and Constitutional Courts without any obstacles. Naturally, it is fully unclear why a lawyer with so many years of service would have to take the final exam at the State School for Judicial Officials, if they wanted to compete for the position of judge of the lower courts.

From 19 to 20 March 2015 the 33rd Croatian Lawyers' Day was held. The topic of the Round Table, which was held on that occasion, was: "Impact of EU Law on domestic legislation and practice". The speakers were: Snježana Bagić, PhD, Deputy President of the Constitutional Court, Tamara Čapeta, PhD, Professor at the Department of European Public Law, Faculty of Law, University of Zagreb, Lovorka Kušan, Lawyer, Bertrand Debosque, Lawyer, Member of French Delegation to the CCBE, Mario Dussi, Lawyer, President of the Commission for International Relations, Ordine degli Avvocati di Milano and Hans-Michael Pott, PhD, Lawyer, member of the Department of European Law of the German Federal Bar Association and head of the German Institute for European and International Law.

We take this opportunity to inform that the 34th Day of Croatian Lawyers will take place on 17 and 18 March 2016 and the topic of the Round Table is: "Admission to the Legal Profession".

On 10 December 2015 the CBA marked the European Lawyers Day with this year's topic being: Freedom of expression. The speakers were: Ph.D. Biljana Kostadinov from the Faculty of Law in Zagreb, Dražen Tripalo judge of the Supreme Court of the Republic of Croatia and Ph.D. Laura Valković, a lawyer, and was moderated by lawyer Mladen Sučević, President of the Lawyers' Academy of the Croatian Bar Association. The event was attended by numerous high-profile representatives of the judiciary and social life of Croatia, and it was present in the media.

In 2015 the Croatian Criminal Code was amended in order to increase the protection of lawyers. The impetus for this change was the tragic event when lawyer Vlatko Vidaković was killed by his client in his law office in March 2015. Although the CBA had constantly warned for several years before this tragic event that it is necessary to amend the Criminal Code to increase the protection of lawyers, since there have been even 8 cases of lawyers being killed while practicing law, the Code was amended only after the murder of lawyer Vlatko Vidaković. With the given amendment lawyers have not received such protection as sought by the CBA, but there has been progress in the protection of lawyers in the performance of our service.

In the course of 2015 the Croatian Bar Association was internationally active and its representatives participated in all major international lawyers' events, both in our international organizations (CCBE, UIA and IBA) and bilaterally with a number of friendly bar associations in Europe and beyond.

Here are just a few of these events:

The German Federal Bar Association (BRAK) and the Croatian Bar Association organized a one-day seminar on "Law - Made in Germany" on 5 November in Zagreb, in which panelists and participants discussed the similarities, but also differences between the German and the Croatian judicial systems. Welcome speeches were delivered by the German Ambassador to Croatia HE Thomas E. Schultze, BRAK Vice-President Dr. Ulrich Wessels and CBA President Robert Travaš. The working part of the seminar was organized in three panels and the panelists on the German side were BRAK Vice-president Dr. Ulrich Wessels and BRAK Civil Law Committee member dr. Valentin Todorow, whereas the Croatian side panel members were lawyer Jelena Arsić, CBA Vice President Mladen Klasić and lawyer Ivica Crnić. The event was present in the media.

The CBA hosted from 17 to 20 November 2015 a delegation of the Bar Association of Moldova for exchanging experiences in order for them to organize the work and activities of the Bar Association of Moldova. The visit was arranged at the initiative of the Council of Europe and of Rytis Jakobauskasa, member of the Lithuanian delegation at the CCBE.

As part of the Lawyers' Day of the Republic of Slovenia held in Celje, the CBA participated in the second meeting of the Bar Associations of Central and Eastern Europe (the first meeting was held in Prague in 2014). The meeting was attended by representatives of bar associations of the Czech Republic, Slovakia, Hungary, Slovenia, Poland and Croatia, and by a representative of the CCBE. At the meeting important issues for the legal profession both in these countries and in the EU were discussed. The CBA will host the next meeting of Bar Associations of Central and Eastern Europe in 2016.

The CBA also takes part in the social life of Croatia by numerous lectures, the presentations of books on jurisprudence or by the organization of round tables held in its premises, all of which are always very visited. Special attention this year deserves the organization of a seminar in cooperation with the Ombudsman for Persons with Disabilities of the Republic of Croatia on the topic: "The right of persons with disabilities to live in the community - where, with whom and how?"

Special attention deserve also the efforts of CBA Lawyers' Academy in the are of lawyers' lifelong learning. The Academy organized numerous lectures and seminars in all parts of Croatia and they were well attended by our members.

The CBA has also a humanitarian activity and this year it donated the funds for the acquisition of medical equipment to two children's hospitals in Zagreb.

Over many years the CBA has granted scholarships to students who are children of deceased members of the CBA until they end their regular schooling. The CBA gave donations to the Zlatko Crnić Foundation for outstanding law students, and participated in the work of this Foundation, which rewards the best scientific works in the field of law.

Finally, hereby it can be established that the position of the CBA and of the legal profession in Croatia is satisfactory, but there is also the need for constant activity in order to maintain and improve the position of the legal profession.



Robert Travas, President  
Croatian Bar Association