

REPORT BY THE CROATIAN BAR ASSOCIATION

On 12 January 2017 a total of 4,621 lawyers and 1,555 trainee lawyers were admitted to the Croatian Bar Association.

In the course of 2016 the Croatian Bar Association focused a lot of its activity on responding to various action plans provided by the ministries of the Republic of Croatia, such as public policies for the development and reform of the market of professional and business services in Croatia designed by the Ministry of Economy of Croatia - Directorate for Trade and Internal Market.

It is well known that the European Commission considers the legal profession to be an economic activity and consequently treats it as any other entrepreneurial activity, which we consider a major loss in respect of the status we have had so far as - that of a self-regulating and independent profession aimed at providing legal assistance. In Croatia the legal profession is a constitutional category. In fact, the provision of Art. 27 of the Croatian Constitution stipulates that the legal profession is a free and independent service that provides legal assistance to everyone. In its decision from the year 2000 the Constitutional Court of the Republic of Croatia took the view that the purpose and goal of the legal profession is primarily to provide professional legal assistance to those in need. Legal assistance, strictly defined as being the profession of lawyers, is an important factor of legal certainty and of a democratic Croatia governed by rule of law, and it represents as such one of the aspects of the activity of the judiciary and administration and therefore the provision of legal assistance by the legal profession can not be understood as an economic activity and can not be, because of its specificity, subject to the laws of supply and demand in the market. Hence, the legal profession provides services of general interest for the protection of fundamental human rights and freedoms.

The implementation of such policies, both by the European Commission, and by the Croatian authorities, primarily by the Ministry of Economy, aimed at maximally deregulating and decreasing the role of the Bar, shows a tendency which is confirmed by the latest attempts to influence the Lawyers' Fee Schedule, lift restrictions on legal advertising and lower the CBA membership fee. Such efforts directly interfere with the independence of the legal profession, especially the reduction of the membership fee. In three of its decisions, in 1993, 1998 and 2008, the Constitutional Court took the view that the legal profession is an autonomous and independent service and that such constitutional position of the legal profession is expressed in the Legal Profession Act, among other things, in the provisions governing the association lawyers in the Bar and the right and duty of the Bar to adopt its statutes and other acts, and therefore the Bar cannot be denied the right to provide funds for its operations and the performance of the tasks entrusted to it by law, and that in this regard the Bar is authorized by the statute to prescribe the obligation to pay membership fees as a source of its income. Therefore, the Constitutional Court on the occasion of solving more constitutional complaints did not find any violations of constitutional rights in the fact that the Bar itself, via its representing bodies, determines the income of the Bar, and thereby also that of the membership fee or the admission fee.

Thus, the interference of the state into a constitutional and legal right of the Bar to determine the amount of membership fees directly threatens the independence of the legal profession and thus violates the provisions of article 27 of the Constitution of the Republic of Croatia and Article 2 of the Legal Profession Act. It should be noted here that the membership fee is really insignificant and amounts to about EUR 26.00 per month.

The Government of the Republic of Croatia has adopted an Action Plan on reducing the administrative burden in the economy and integrated into such Plan the aforementioned changes concerning the legal profession (the abolition of the minimum price of work per hour, the liberalization of legal advertising, a reduction of the membership fee by at least 30% and some other minor or uncontroversial changes).

Any encroachment by the state on the independent funding of the CBA and on the current income of the CBA from membership fees and registration fees, would not only be an illegal encroachment on the independence and autonomy of the legal profession, but it would also prevent the CBA and Croatian lawyers from actively and effectively participating in the computerization and reform of the judiciary. Moreover, it would prevent the CBA from properly performing its tasks in accordance with the Legal Profession Act, the Statute and other CBA enactments, and pursuant to all decisions of the CBA General Meeting. Decisions concerning the financing of the CBA and the use of funds, which are paid only by CBA members, are taken by CBA members themselves, and this via the General Meetings of their Local Bar, where, among others, members are elected to the CBA General Meeting at which they present the views of their other members and then, with all other members of the CBA General Meeting, they bring the Annual Plan for the Financing of CBA Activities. Such Annual Plan is adopted at every annual General Meeting of the CBA for the following year. The CBA is financed exclusively with funds collected from its members, and with these funds all of its activities are funded. The CBA has never received any donations, not a single euro, or any funds from the state budget, or any funds from domestic or foreign governmental or non-governmental organizations, exactly in order to preserve the full independence of the legal profession and of the Croatian Bar Association.

The Croatian Lawyers' Day, held on 17 and 18 March 2016, was dedicated to the topic "*Access to the Legal Profession*". This topic was presented by Victoria Hellenbart, Vice-President of the Slovak Bar Association, Eva Indruchova, Head of the International Department of the Czech Bar Association, Matija Potočnjak and Mladen Sučević, lawyers in Zagreb. Within the Croatian Lawyers' Day the meeting of the Presidents of Bar Associations of Central and Eastern Europe was held, which was attended by representatives of the bar associations of Poland, the Slovak Republic, Slovenia, the Czech Republic, Germany, Austria, Hungary, Croatia, and by a representative of the CCBE. The meeting was dedicated to the topic "*Legal services in the EU Single Market - peculiarities and problems in the national markets of legal services.*" Hence, this is a topic that concerns policies of the European Commission in respect of the Legal Profession. The conclusion of the meeting was that problems are identical to all bar associations since it is obvious that the European Commission does not accept the specific role of the legal profession in the legal systems of some countries, i.e. the role of the legal profession in consolidating the rule of law and in building a country ruled by law.

We use this opportunity to announce that the 35th Croatian Lawyers' Day will be held in Zagreb on 16 and 17 March 2017.

In May 2016 Croatian lawyers held a Conference of lawyers and trainee lawyers at which they discussed about the legal profession in Croatia as part of the judiciary.

In December 2016 Croatian lawyers marked the European Lawyers Day discussing the issues of access to justice through free legal aid and the right to a lawyer.

Over the last year the legislative activities in Croatia were also discussed, primarily the amendments to some crucial acts, such as the Civil Procedure Code, the Enforcement Act, the Family Act and others. Particularly problematic are some proposals to amend the Civil Procedure Code seeking to limit the procedural rights of the parties to the proceedings, primarily by limiting the reasons for review by the Supreme Court, whereby regular reviews are practically eliminated, which Croatian lawyers consider unacceptable and expressed such views clearly and publicly at the round table that was organized for such purpose. In fact, by limiting the availability of regular reviews as an extraordinary remedy, the possibility is reduced for the Supreme Court to create case law, which is exactly the most important role the Supreme Court has within the Croatian legal system.

The Croatian Bar Association signed a new cooperation agreement with the American Bar Association - Section of International Law. Together with its American counterparts the CBA will organize a joint seminar in Zagreb from 27/2/2017 to 1/3/2017 as well as a visit to the Ministry of Justice, the Supreme Court, the Constitutional Court of the Republic of Croatia, the Faculty of Law of the University of Zagreb and the Croatian Chamber of Commerce. The presidents and representatives of bar associations of Slovenia and Bosnia and Herzegovina will participate as our guests in that joint seminar.

The CBA announced to the *Union Internationale des Avocats* (UIA) its wish to be the organizer and host of one of its next congresses.

We consider the attitude of the European Commission towards the legal profession in Croatia to be inadequate, bureaucratic and showing a deep misunderstanding of the constitutional status and role of the legal profession in Croatia. In addition, the EC does not respect the arguments provided by the CBA in its statements on EC questions, and does not give any explanations or counter-arguments. Regrettably, some ministries of the Republic of Croatia, in particular the Ministry of Economy, in our opinion, unquestioningly and uncritically seeks the implementation of some views of the EC that are not acceptable to the legal profession, and that are not -in our interpretation and argumentations - in compliance with Croatian and European law. This applies in particular to the different interpretations of the judgments of the ECJ, where we interpret a judgment in one way, while the EC in order to implement some of its ideas, interprets the same judgment in a different way.

Regardless of the need to harmonize the performance of the legal profession in the EU, the peculiarities of the market and the ways to practice law in each EU member state should not be neglected, since this leads some countries and lawyers into an unequal position on the EU market, and, as far as we can remember, one of the main goals of joining the EU was equality and mutual prosperity.

We are convinced that the year 2017 will be a year full of challenges for Croatian lawyers. The CBA will address these challenges and respond with arguments in its efforts to preserve the status of the legal profession, but we are not optimistic in the fight to prevent the further erosion of the legal profession in the EU, including that in Croatia. Unfortunately, we have the impression that our colleagues from other EU countries and international associations abandoned or had to abandon such fight a long time ago, and that the time of application of the old saying: "If you can't beat them, join them", or, in other words: "get adjusted" is about to start or has already started.



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Croatian Bar Association