

EUROPEAN PRESIDENTS' CONFERENCE 2017

Country report - Slovenian Bar Association

STATISTICS

Slovenian Bar Association, next year celebrating its 150th anniversary of organized bar on the territory of Slovenia, consists of 2,240 members. The register of lawyers includes 1,707 lawyers (937 gentlemen and 770 ladies). The register of prospective entrants includes 175 prospective entrants and the register of pupils includes 358 pupils. There are 263 law companies and 8 civil law companies active in Slovenia.

The number of candidate lawyers to be entered into the register of lawyers every year has been growing. It is not a surprising fact with reference to the big number of graduates from law, who may complete their studies of law at as many as three Slovene law schools, and considering the unfavorable economic situation of the country, this fact and the future ever more desirable employment in the bar shall be taken into account anyway. As far as we know, Slovenia does not investigate how many graduates from which sections will be needed in the economic sector in the future in order to secure the welfare of the country. Unfortunately, for the last decade, the Slovene market shows even without research that in Slovenia the graduates from law are redundant. The government does not regulate it. A logical consequence of such excess of graduates from law is that they look for the most easily accessible legal professions. In the judiciary, the bar is certainly the most easily accessible profession.

AMENDMENT OF THE BAR ACT

The Bar Act was changed in 2016. On 1 July 2016, there entered in force the amended Bar Act that prejudices the autonomy of the bar and of Slovenian Bar Association with reference to the decision-making about the amount of the

lawyers' registration fee. Until the effective date of the above Act, the amount of the lawyers' registration fees was subject to an autonomous decision of Slovenian Bar Association, precisely to the respective Lawyers' Assembly as its supreme body.

Under the amended Act, the amount of the lawyers' registration fee is determined in the by-laws of the Slovenian Bar Association. The by-laws of the Slovenian Bar Association are approved by the Government of the Republic of Slovenia. Accordingly, the amount of the lawyers' registration fee fully depends on the Government of the Republic of Slovenia, hence on the respective political will. Such legal system, however, involves an inadmissible financial dependence of the lawyers' professional union from the will of the Government / the State, which is not in the public interest.

It is absolutely necessary and of key importance for the bar that in the process of determining the method and the amount of the revenues of the Bar Association the latter is not put into a subordinate position by the State. As a matter of fact, the bar shall fulfill its social and constitutional role of a provider of paid legal assistance that also secures on a highly qualified level the protection of individual constitutional categories that, however, requires organizational and functional autonomy and independence, including the issues of financial nature relating to the lawyers' professional union, financed merely from registration and membership fees.

Accordingly, the Bar Association is going to apply appropriate remedies for securing the autonomy of the bar.

As the existing system requires numerous changes, the Bar Association (the working teams and the Board of Lawyers of the Bar Association) was also intensively preparing the provisions of the new Bar Act in 2016. The draft provisions were launched to the members at the Lawyers' Assembly of Slovenian Bar Association in April 2016. The respective draft provisions serve for drafting the bill in cooperation with the Faculty of Law of the University of Maribor, with the Public Administration Institute and with the Constitutional Law Institute under the Faculty of Law of the University of Ljubljana.

ECONOMIC ANALYSIS OF THE POSITION OF THE SLOVENE BAR

The Bar Association ordered for the first time in its history the elaboration of an economic study on the position of the Slovene bar. The economic study on the position of the bar of the Republic of Slovenia will cover the period from 1995 till 2014 inclusive. Already the first details from the study reveal that the position of the bar in the Republic of Slovenia, in particular that of minor law offices, is worrying. Increased market concentration, specialization of lawyers' services along with geographic concentration and economic crisis have brought about the circumstances in which the prevailing part of minor law offices has become even more dependent on little profitable services, i.e. the services for less demanding and less well-off citizens and/or the services for securing legal the protection provided by the State. As a consequence it can be deduced that the freezing of the lawyers' tariff since 2013 has the most imperiled the operations of the smallest law offices, which has in turn threatened their economic independence along with the quality of their services and on the long run even adequate coverage with a network of lawyers' services. The results of the study will be known in the first four months of this year.

LAWYERS' TARIFF

Since the Minister of Justice did not approve the rise in the value of the point of the lawyers' tariff in spite of the fulfilled terms and conditions for the respective rise, such as already reported in the last year's report, the Bar Association filed in February 2016 a legal action to the Administrative Court of the Republic of Slovenia concerning the modification and/or the cancellation of the act by the Minister of Justice. The Bar Association urged the Court to pass the decision.

Moreover, there has not yet come to an epilogue concerning the amendment of the Bar Act (ZOdv-D) whereby the legislator reduced by half the tariff for ex officio and for pro bono legal services. Slovenian Bar Association filed to the Constitutional Court of the Republic of Slovenia its motion for assessment of the constitutionality of the amended Bar Act (ZOdv-D), whereby the Constitutional Court of the Republic of Slovenia refused the motion by the Bar Association with the explanation that it has no legal interest and it rejected the lawyer's motion

due to the failure to exhaust the legal remedies. After exhausting the legal remedies against each individual Costs Determination Act, the lawyers will file adequate legal remedies to the Constitutional Court of the Republic of Slovenia.

At the moment, due to challenging the acts in the course of the free legal aid proceedings focused on the determination of lawyers' costs and fees cut by half in terms of Article 17(5) of the Bar Act, such as started by individual lawyers and in which the Bar Association notified a third-party intervention, there are five administrative disputes pending as follows: one before the Administrative Court of the Republic of Slovenia, one before the External Department in Celje and three proceedings before the External Department of the Administrative Court in Nova Gorica.

Slovenian Bar Association also notified a third-party intervention in the proceeding of the constitutional complaint filed by the lawyer with reference to the determination of lawyers' costs and fees cut by half in the ex officio proceeding in terms of Article 17(5) of the Bar Act (ZOdv).

INVESTIGATIONS OF LAW OFFICES UNDER THE DECISION BY THE CONSTITUTIONAL COURT

Upon the adoption of the constitutional decision in January last year, such as already reported in our last year's report (the Constitutional Court of the Republic of Slovenia agreed with the Bar Association and with the investigated lawyers that the challenged law office investigation system invoked in the Criminal Procedure Act and in the Bar Act is inconsistent with the Constitution of the Republic of Slovenia. The Court has found a violation of the human right to lawyer's privacy, of the right to judicial protection and of the right to legal protection in the proceedings of the ordered investigations of law offices. On these grounds it ordered to the Parliament of the Republic of Slovenia to eliminate the unconstitutionality within one year from the publication of the decision and until that date, by considering all warranties established under the decision in question, to regulate a temporary system of house investigations, investigation of electronic equipment and seizure of objects with lawyers, and it determined the legal remedies in the respective proceedings), the representatives of Slovenian

Bar Association actively participate in all proceedings related to law office investigations in order to achieve constitutional warranties in accordance with the decision of the Constitutional Court. The essence of the enforcement of the decision by the Constitutional Court lies in the fact that it regulates the legal order enforcement procedure about the act of investigation that shall itself consider the constitutional warranties from the respective decision, in the manner enabling the lawyer and the representative of Slovenian Bar Association, in view of protection of the lawyer's privacy, an efficient objection to the fact that the investigating judge or the police may inspect the documents and the electronic equipment. Such objection shall be followed by immediate sealing of the document or of the electronic equipment (and/or its copy) and by the submission thereof to the District Court judge (excluded from the investigation) to decide on the eligibility of their seizure. The seizure of the data from electronic equipment may be supported by a judicial expert in order to secure the respect of the necessity of the intervention. If the judge decides that the data shall be seized in spite of the objections, an appeal may be filed against such decision by an appropriately near deadline that may have a suspensive effect on the decision of the judge. In such appeal the lawyer and the representative of Slovenian Bar Association may as well invoke constitutional (and statutory) deficiencies of the judicial order on the admission of an act of investigation.

COOPERATION AT REGULATION PROCEEDINGS

Slovenian Bar Association regularly participates at regulation proceedings in the filed of judiciary that is important for the bar. However, it notices that in these proceedings the Ministry of Justice has a very different approach to the Bar Association. In certain, exceptionally rare cases, the representatives of the Bar Association already make part of the working team with the Ministry of Justice, while in other cases the Bar Association may enter the regulation proceeding only in the phase when a draft regulation is already made and it is possible to put forward proposals or to make comments only within a very limited period of the public discussion about the draft regulation. Recently the Bar Association has even received the requests for comments on several bills at a time, among others even during the summer vacation, which the Bar Association considers to be an inappropriate moment of time.

Until now the representatives of the Bar Association have been invited to participate in the working team only at the preparation of the restated wording of the Law of Property Code.

Accordingly, the Bar Association proposed to the Ministry of Justice to let it participate at the preparation of the legislation already in the most early phase, by allowing it to join the working team in order to enable the Bar Association and the bar as part of the judiciary to contribute accordingly to the search of adequate solutions for the Slovene legal order.

The Bar Association received the following bills in order to make comments within the scope of professional harmonization:

Amending Bill to the Criminal Procedure Act (ZKP-N), Amending Bill to the Civil Procedure Act (ZPP-E), Bill of the Judicial Council, State Attorney Bill, new draft Judicial Order, Bill of Collective Legal Action, Amending Bill to the Criminal Code, Amending Bill to the Prevention of Restriction of Competition Act (ZPOmk-G), Amending Bill to the Reciprocity Identification Act (ZUVza-1), Family Code Bill, Bill on Prevention of Money Laundering and Terrorist Financing, Financial Instruments Market Bill, Amending Bill to the Financial Operations, Insolvency Proceedings and Compulsory Termination Act (ZFPPIPP-G) and proposed subjects for the new Housing Act and/or other housing legislation.

Slovenian Bar Association made its comments and proposals to all bills. The comments of the Bar Association are published on our web site www.odv-zb.si, under the heading "Lawyer", the sub-heading "Legislation – Comments, Proposals by Slovenian Bar Association."

Due to the envisaged thorough modifications of the Criminal Procedure Act, Slovenian Bar Association along with the Lawyer's Academy with Slovenian Bar Association organized a round table on the proposed amendments to the Criminal Procedure Act, to the Criminal Procedure Bill (ZKP-N) in September 2016. The respective most important novelty involves partial cessation of judicial investigation.

APPLICATION OF THE VAT RATE UNDER THE VALUE ADDED TAX ACT WITH REFERENCE TO LAWYERS' SERVICES

The Supreme Court of the Republic of Slovenia rejected the audit of the lawyer (and as a consequence also the third-party intervention to Slovenian Bar Association) against the judgment by the Administrative Court of the Republic of Slovenia that approved the position of the administrative body with reference to the recognized value added tax (VAT) and indicated the necessity to consider Article 40 of the Value Added Tax Act (ZDDV-1) imposing the application of the rate in force at the moment of the taxable event. In the concrete case the hearing took place on 28 February 2013 when the applicable VAT rate was 20%. However, the lawyer issued his invoice on 1 July 2013 when the applicable VAT rate of 22% was already in force.

On the basis of the opinion by DURS – Tax Administration of the Republic of Slovenia (now FURS – Financial Administration of the Republic of Slovenia), courts required from lawyers after 20 July 2013 to issue the invoice with the lower VAT rate in spite of the explicit legal provision whereunder the lawyer may issue the invoice only upon the receipt of the court decision on the fixing of costs (Article 40(7) of the Pro Bono Legal Aid Act) and in spite of the explicit prohibition to issue an invoice with the 20% rate after 20 July 2013 (Article 60a(3) of the Implementation of the Republic of Slovenia's Budget for 2013/2014 Act (ZIPRS). On these grounds Slovenian Bar Association notified a third-party intervention against the decision by the Administrative Court of the Republic of Slovenia and backed up the proposal of the lawyer as the plaintiff that the EU Court be asked preliminary questions. In the respective matter the Bar Association is going to notify a third-party intervention in the proceeding before the Constitutional Court of the Republic of Slovenia and it also proposed the notification of participation to CCBE.

TRAINING COURSES FOR LAWYERS

In 2016, too, the Lawyers' Academy with Slovenian Bar Association organized numerous training courses and workshops for members of the Bar Association,

within the scope of its permanent training in addition to the traditional Lawyers' School in April 2016.

Moreover, the Bar Association purchased the hardware for equipment of the conference room dedicated to the training of lawyers for the use of the e-justice and e-administration portals, as well as for electronic delivery and for law office management software referred to as Law Office.

TRADITIONAL DAY OF LAWYERS' PRO BONO LEGAL AID

In 2016, the traditional Day of Lawyers' Pro Bono Legal Aid took place on 18 December when 500 lawyers all over the country offered to clients free of charge legal aid simultaneously and in an organized form, although many members of Slovenian Bar Association provide such pro bono aid daily, in accordance with the Lawyers' Code of Professional Ethics. The first pro bono legal aid services were also provided in the offices of the Bar Association.

EUROPEAN LAWYERS DAY

The European Lawyers Day held on 10 December 2016 was commemorated by the Bar Association through the distribution of the financial resources from its humanitarian fund to persons in need.

M.Sc. Roman Završek, President



The image shows a handwritten signature in blue ink, which appears to be "Roman Završek". Below the signature is a circular blue stamp. The stamp contains the text "LJUBLJANA • ODVETNIŠKA ZBORNICA SLOVENIJE" around the perimeter and "OZS" in the center.