



46th European Presidents' Conference 2018 in Vienna

*Croatian
Bar
Association*

2017 REPORT OF THE CROATIAN BAR ASSOCIATION

On 9 January 2018 a total of 4,720 lawyers were admitted to the Register of Lawyers of the Croatian Bar Association (hereinafter: "CBA"), 12 foreign lawyers were admitted to the CBA Register of Foreign Lawyers, and 1,576 trainee lawyers were admitted to the CBA Register of Trainee Lawyers.

In the course of 2017 the problem of the uncontrolled growth in the number of lawyers has continued, and it does so at a yearly rate of about 8%. The reason for such an uncontrolled growth is the lack of planning in the education of new jurists, alongside with the fact that the judiciary, the state administration and the economy employ a very small number of new jurists. Hence, not having the possibility to choose, many jurists turn to the legal profession, as do those who have been cancelled their employment contracts and cannot find another job. The Croatian Bar is not satisfied with such a scenario and with such a negative selection of new colleagues since for some of them the legal profession is not the first career choice, nor a style of living, but rather a necessity. This may also be the reason for the constant decline in the quality of legal services. In addition, when considering the relatively weak Croatian economy and the low purchasing power of citizens, it is clear that the situation in the Croatian advocacy is not a good one and it is surely not improved by the policy of the European Commission which seeks to further liberalize access to the legal profession without taking into account the peculiarities of some small markets of legal services. The formal equality of lawyers from "small" member states in a single European market is only a platitude since it is clear, or it should be clear to everyone that lawyers from small national markets of legal services are not and never will be able to compete equally with lawyers or law firms from large member states or from major European economic centres. Therefore, the impression one gains is that this fact is sometimes deliberately neglected, making it clear who will benefit from the liberalization promoted by the EC and in which way, and who will rather suffer from the problems it brings and from the inequality in the market caused thereby.

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In that respect the Croatian Bar Association is in some cases not satisfied with the behaviour of the CCBE either, i.e. with some CCBE representatives, who expressed their views on one lawyer/law firm case via e-mail stating that they should contact the European Commission in order to caution a particular country and pressure the change of some provisions of the Legal Profession Act in the Republic of Croatia, which is however fully in line with the *Acquis Communautaire*, as well as all the Directives mentioned, since all these regulations were in force before July 2013 when the Republic of Croatia was admitted to full EU membership, and then the Legal Profession Act was scrutinized following a lengthy 10-year-negotiation process, and this Act was found to be fully in line with the European *Acquis*. So, why and in whose interest is the European Commission now insisting on certain changes within the reform of the market of professional services will remain an open question, and the proposed changes are certainly not in the interest of Croatian lawyers. We believe that the role of the representatives within the CCBE should be quite different from that of referring a lawyer/law firm from a given Member State, even informally, to complain to the European Commission about other members of the CCBE, and that the CCBE as an organization of all law firms of all EU member states should take care of the needs and peculiarities of small markets of legal services, and of the objective limitations of such lawyers and law firms to compete on a common European market of legal services. If this is not the case, the Croatian Bar Association does not see the purpose of its membership in the CCBE, nor the benefits that the legal profession in Croatia might have from it.

Considering that in the Republic of Croatia the legal profession is defined pursuant to the provision of Article 27 of the Croatian Constitution as an independent and autonomous profession providing legal assistance to anyone in accordance with the law, and this constitutional provision is contained in the Chapter of the Constitution relating to the protection of fundamental human rights and freedoms, the Croatian Bar Association cannot accept the position that the legal profession is an economic activity that needs further liberalization. The Constitutional Court of the Republic of Croatia took the view that the purpose of the legal profession is primarily to provide professional legal assistance to those in need, that 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 that the legal profession represents as such one of the aspects of the activity of the judiciary. In the aforementioned decision the Constitutional Court expressly stated that the provision of legal assistance by lawyers cannot be understood as an economic activity and cannot be subject, because of its specificity, to the laws of supply and demand on the market and that the specific rules governing the legal profession make its position significantly different from the position of economic activities on the market. We consider this position of the Constitutional Court of the Republic of Croatia to be in line with the tradition and with Continental Law. That the legal profession is a specific part of the admiration of justice, arises from some sections in the decision of the ECHR case *Morice v France* (C-29369/10).

However, the Croatian Bar Association had to accept some of the positions of the European Commission and thus within the framework of the liberalization of the practice of law it will allow more possibilities for lawyers to advertise, provided that the information conveyed is true, reliable, not misleading and that it respects the confidential relationship between lawyer and client.

Within the framework of introducing e-business into the work of the judiciary and the administration, the Croatian Bar Association has actively participated therein introducing an electronic procedure for registering an establishment and obtaining a license to practice law. The Croatian Bar has also participated in the implementation of the e-communication pilot project in the judiciary, which is being carried out at the Bjelovar Commercial Court. This project envisages the full electronic communication of lawyers with the courts.

In November 2017 the Croatian Bar was invited to provide its position statement on the guidelines of the European Commission for the Reform of the Profession in relation to two controversial issues: the revision of the Legal Profession Act provisions on the termination of the right to practice if a lawyer does not practice for more than six months for unjustified reasons (the so-called *six-month-rule*), and the need to resolve the scope of the restriction on legal counselling provided by lawyers or by other service providers, particularly in relation to online services. It should be noted that the Croatian Bar Association has provided its statement about the so-called "*six-month-rule*" issue to the European Commission (through Croatian Ministry of Justice and Croatian ministry of economy) at least six times, but the same question is coming back again and again. The given provision applies only to those lawyers who, for some unjustified reasons, do not practice law and it serves as such solely and exclusively for the protection of clients. Namely, clients must have the right to access to their chosen lawyer in order to protect their rights. A lawyer who does not perform his / her profession conscientiously and continuously can cause damage to their clients: a failure or partial failure to enforce their rights. Pursuant to the Legal Profession Act, a lawyer who has a justified reason not to practice (e.g. illness or professional training etc.) shall inform the Bar thereof, and the Bar shall appoint a deputy lawyer who will temporarily take over their office and protect the interests of their clients. It should be noted that for lawyers admitted to the CBA Register of Foreign Lawyers, it is considered to be a justified reason if the lawyer does not practice for more than 6 months if they practice in their law offices in their home state, so that this rule does not apply to lawyers admitted to the CBA Register of Foreign Lawyers.

As regards the provision of online services, the Croatian Bar sees there a high risk of violation of the confidentiality principle between lawyer and client. In addition, there is also an increasing number of online services offering the provision of legal assistance, but which are not authorized to provide legal assistance for a remuneration. The Croatian Bar has reacted to such cases, and following a written warning by the CBA, some such services stopped their unauthorized provision of legal assistance. However, it is obvious that lawyers should also adjust to such a way of providing legal services online.

The Croatian Bar Association has devoted much of its work to the issue of the statutory limitation on the right to collect legal fees. Namely, the position of the Supreme Court of the Republic of Croatia was that the start of the statutory limitation for the collection of legal fees began to run from every action carried out within a court or administrative proceeding. The Croatian Bar Association, on the other hand, considered that the statutory limitation for the collection of legal fees starts running as of the moment of a final completion of court or administrative proceedings, or from

the moment the party revokes the power of attorney. Such a position of the Croatian Bar Association has recently been accepted through case-law and some courts in the Republic of Croatia have begun to make judgments in which they did not accept the objection to the statutory limitation of claims which argued that the start of statutory limitation began to run from each individual action, but expressed the view that the start of the statutory limitation period begins to run from the final completion of the lawsuit in which the lawyer provided their legal services. This case-law is particularly important for lawyers because, due to the length of court proceedings in Croatia, some of them lasting for ten or more years, and after the final completion of such lengthy proceedings, the clients simply used to object to the right to the compensation of the lawyer stating that such right has become statute-barred for some of the actions performed by the lawyer.

Through its representatives the Croatian Bar Association has actively participated in legislative activities, providing remarks to the Act on Amendments to the Administrative Courts Act, the Bar Examination Act, the Act on Amendments to the Civil Procedure Act, the Act on Amendments to the Criminal Procedure Act, and other acts, i.e. every time when the Croatian Bar Association was invited to participate in the work of law-drafting task groups. The co-operation with the Ministry of Justice is good, but other ministries fail to invite lawyers to participate in the work of the law-drafting group for their respective scope of activity. It should be noted that when appointed to the law-drafting group as representatives of the Croatian Bar Association Croatian lawyers are working in this groups free of charge.

The Croatian Bar Association has also proposed to the Croatian Parliament to change its Rules of Procedure in such a way as to appoint representatives of the CBA as external members to the Committee for Justice and the Committee for Legislation of the Croatian Parliament.

Within the framework of the Co-operation Agreements signed between the American Bar Association - Section of International Law (ABA SIL) and Croatian Bar Association from 2014 and 2016, a joint seminar was held in Zagreb from 27 February to 1 March 2017 discussing the alternative dispute resolution, access to legal services, confidentiality between lawyers and clients, and other issues related to the legal profession. The high-profile ABA delegation was led by Linda Klein, President of the American Bar Association. The seminar was also attended by presidents of our friendly Bar Association of Slovenia and Bar Association of the Federation of Bosnia and Herzegovina. The delegation of ABA and CBA was received by the President of the Republic of Croatia, the President of the Constitutional Court, the Minister of Justice, the Deputy President of the Supreme Court, the Deputy President of the Croatian Bar of Economy, the President of the Permanent Court of Arbitration at the Croatian Bar of Commerce and by the Dean of the Zagreb School of Law.

The Croatian Lawyers' Day was held on 16 and 17 March and the topic of the Round Table was "*A World Without Lawyers*". The chosen topic was meant to show how the world would look like if there was no legal profession and what the advantages and disadvantages are of a modern way of performing the legal profession via various platforms allowing the online provision of legal services, all the way to robots providing legal services. It also tried to show what the full liberalization of legal



advertising brings, and the audience could see what the commercials of some lawyers look like in the USA, Finland, England etc.

In 2018 the Lawyer's Day will be held on 22 and 23 March and the topic of the Round Table will be "The Lawyer's Code of Conduct and the Challenges of the Present".

A handwritten signature in blue ink, appearing to read 'R. Travaš', written over a faint, stylized circular graphic.

Robert Travaš, President
Croatian Bar Association