

REPORT ON 2017 ACTIVITIES OF SLOVENIAN BAR ASSOCIATION

1. INTRODUCTION

Slovenian Bar Association, in 2018 celebrating its 150th anniversary of organized bar on the territory of Slovenia, consisted of 2,241 members in 2017. The register of lawyers included 1,737 lawyers (939 gentlemen and 798 ladies). The register of prospective entrants included 173 prospective entrants and the register of pupils included 331 pupils. In 2017, there were 267 law companies and 9 civil law companies active in Slovenia.

The number of lawyers has been subject to constant growth. Compared to the preceding year, the number of lawyers has increased by almost 2 percent and even by 90 percent in the last fifteen years. 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 that is employing a very limited number of lawyers. 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 as it is suitable for self-employment, which is not possible in other legal professions.

Unfortunately, for the last decade, the Slovene market shows – even without research – that in Slovenia the graduates from law are redundant. 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. The redundancy of professionals in a specific sector is breaking the market balance, accordingly in the future this fact shall definitely be considered and followed by due action as soon as possible, also on the part of the government.

Amendment of the By-Laws of Slovenian Bar Association in Terms of the Amount of the Lawyers' Registration Fee

In 2016, the Bar Act changed, thereby prejudicing the autonomy of the bar and of Slovenian Bar Association of Slovenia with reference to the decision-making on 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 by Slovenian Bar Association, precisely by 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 Slovenian Bar Association that are in turn subject to the approval 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.

The Lawyers' Assembly of Slovenian Bar Association, held on 16 March 2017, adopted the amendment of the by-laws of Slovenian Bar Association in the section invoking the amount of the lawyers' registration fee. With reference to the amended by-laws of Slovenian Bar Association the lawyers' registration fee totals EUR 3,000.00. However, the Government of the Republic of Slovenia has not yet approved the amended by-laws of Slovenian Bar Association of 16 March 2017 in spite of several urgent requests by Slovenian Bar Association.

Lawyers' Tariff

In February 2016, Slovenian Bar Association filed 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 whereby the latter refused to give his consent to the change of the value of the lawyer's tariff point. The Minister of Justice did not approve the harmonization of the value of the lawyers' tariff point with the inflation rate in spite of the fulfilled terms and conditions for the respective rise.

In August 2017, upon the request filed by Slovenian Bar Association for accelerating the procedure, the first instance court rejected the legal action filed by Slovenian Bar Association by alleging that the act by the Minister of Justice contesting the legal action was not an administrative act and/or an act that could be contested in an administrative procedure. Slovenian Bar Association has filed an appeal against the judgment but the Higher Court has not yet passed its decision on the respective appeal.

Moreover, there has not yet come to an epilogue concerning the modifications of the Bar Act (ZOdV-D) whereby the legislator reduced by half the tariff for ex officio and for pro bono legal services (Article 17(5) of the Bar Act).

Moreover, in 2017, Slovenian Bar Association notified a third-party intervention in two proceedings of the constitutional complaint filed by two lawyers with reference to the determination of lawyers' costs and fees cut by half in the representation under the Mental Health Act and in connection with the ex officio proceeding as well as in two procedures relating to the motion for the assessment of the constitutionality of Article 17(5) of the Bar Act (ZOdv).

Problems of Provision of Documents in Pro Bono and Ex Officio Legal Services

The lawyers appointed as defending counsels ex officio face in practice big difficulties in providing the respective documents. Before the lawyer can start working, he is obliged to get himself (often even at his/her own expense) the photocopy of the documents, which makes his/her defense ex officio more difficult in terms of time consumption and financial expense. Often it even happens that the lawyer gets no refund of such photocopying costs or receives a partial refund only. Similar troubles associated with photocopying and the related costs are also faced in case of pro bono services.

Accordingly, Slovenian Bar Association presented these problems to the Supreme Court of the Republic of Slovenia and to the Ministry of Justice and it filed a motion for adoption of appropriate measures (including the change of the legislation) that will secure to defense counsels on their appointment for ex officio and pro bono legal aid services such material conditions as required for enforcement of constitutional rights of the parties to the procedure.

In December 2017, on the initiative of Slovenian Bar Association, the Ministry of Justice called the first meeting attended by the representatives of Slovenian Bar Association and of the Ministry of Justice as well as by the representatives of the Supreme Court and of the District Court in Ljubljana. At the meeting, the participants put forward concrete proposals for the respective solutions. The same topics will continue to be discussed in 2018. Slovenian Bar Association will strive for the soonest possible adoption of the necessary solutions.

Economic Analysis of the Position of the Slovene Bar

In the last fifteen years, the bar of Slovenia has been facing systematic disintegration. It is reflected in the reduced autonomy and independence of the

bar, which is due to the changed legislation reducing the competencies of the bar (e.g. with the Notaries Act, the Land Register Act, the State Attorneys Office Act etc.), on one hand, and to the interpretation of the existing regulations by other members of the judiciary and by the executive branch to the prejudice of the bar, on the other hand. Moreover, the independence of the bar is also affected by the worrying economic situation of lawyers.

Due to the alarming situation in the bar and in order to point out to the need for changes through empirical data, Slovenian 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, covering the period from 1995 till 2014 inclusive, was drawn up by Economic Institute of the Law School of the University of Maribor. The empirical data from the study reveal that the economic situation of the bar in the Republic of Slovenia, except that of a few big law firms, is worrying for several reasons. The poor situation is also due to the fact that the lawyer's tariff point has remained unchanged since 2013 and that under the legislation in force the lawyer providing pro bono services paid by the government and the ex officio defense is entitled only to one half of the payment under the lawyer's tariff.

The economic study on the position of the bar has already been presented to the members of Slovenian Bar Association on the occasion of regional lawyers' meetings and it has also been submitted to the Ministry of Justice.

Conference on the Role of the Bar in the Republic of Slovenia

In order to draw the attention of the broad professional public to the severe problems of the bar, the State Council of the Republic of Slovenia and Slovenian Bar Association organized a conference with the title "The Role of the Bar in the Republic of Slovenia", held in the offices of the State Council on 21 June 2017.

In addition to the highest representatives of the organizing bodies, the conference was attended by the President of the Constitutional Court of the Republic of Slovenia, by the President of the Supreme Court of the Republic of Slovenia, by the Ombudsman, by the Advocate General, by the representatives of the Ministry of Justice, by lawyers and by journalists.

With reference to the alarming situation in the bar most speakers agreed that the changes were urgently needed. In order to secure efficient and correct operation of the whole judiciary along with the active rule of law it is necessary to re-establish the independence and the autonomy of the bar in practice as well.

The identified problems of the bar, i.e. low lawyers' fees, pro bono legal services and ex officio legal services in criminal matters, reduced legal safety of citizens, bad public reputation of the bar and of the whole judiciary, inadequate cooperation among members of the judiciary, non-consideration of the bar as legal profession in lawmaking and failure to provide a suitable lawyers' working environment, shall be remedied as soon as possible, by finding adequate solutions, both through amendments to the Bar Act and to other restrictive legislation as well as through more dialogue among the competent participants. They also stressed the need for establishing some constructive cooperation of all participants of the judiciary, thereby taking into account that the judicial system is focused on the individual whereof the protection of rights requires an efficient legal system including the bar. Moreover it is necessary to regulate the lawyers' remuneration relations if they are expected to render highly professional and high quality services. In view of protection of individuals' rights in judicial procedures it would be suitable to provide for mandatory lawyers' representation in the courts.

Slovenian Bar Association informed the public of the conclusions of the conference and the State Council drew the attention of the Government of the Republic of Slovenia to the respective findings by inviting it to examine together with the Ministry of Justice all presented statements, comments, findings, warnings and proposals as well as to make highly coordinated amendments to the legislation concerning the operation of the bar.

New Bar Bill

The existing regulation of the bar, its position in the Slovenian society and in the judiciary, along with numerous accumulated problems that already prevent from the performance of its primary mission, they all call for changes to take place as soon as possible. Slovenian Bar Association (its working team and the Board of Lawyers) completed the preparation of theoretical issues for the new Bar Act already in 2016. On the basis of these theoretical issues Slovenian Bar Association in cooperation with the Law School of the University of Maribor, with the Institute for Public Administration and with the Institute for Constitutional Law with the Law School of the University of Ljubljana drafted the new Bar Bill

by the end of 2017. Slovenian Bar Association is going to submit it to the Ministry of Justice in the first half of 2018.

Accordingly, the study on the economic position of the bar and the new Bar Bill constitute the materials of the profession and the issues for the urgently needed regulatory changes.

Attempt by CCBE to Intervene into the Decision-Making Procedure Concerning the Entry of Lawyers into the Register of Lawyers with Slovenian Bar Association

In 2017 Slovenian Bar Association faced the attempt by CCBE – Council of European Bars to intervene into the concrete decision-making procedure concerning individual lawyer's fulfillment of the terms and conditions for entry into the register of lawyers.

The entry and the removal of lawyers into/from the register of lawyers is subject to the decision of the Board of Lawyers of Slovenian Bar Association, based on Article 31 of the Bar Act. Moreover, the Bar Act includes a substantial list of the terms and conditions to be fulfilled by an individual for exercising the lawyer's profession in the Republic of Slovenia. In the event of a rejected application for such entry into the register of lawyers the respective individual has at his/her disposal appropriate legal remedies against such decision (administrative dispute).

The applicant that in the procedure of being entered into the register of lawyers failed to prove her full competence for exercising the lawyer's profession and was rejected in the course of the administrative procedure to be entered into the register of lawyers referred to CCBE for assistance and asked it for intervention with Slovenian Bar Association, which CCBE did.

Slovenian Bar Association immediately responded to the inadmissible attempt of CCBE's intervention relating to the concrete administrative procedure of decision-making on the entry into the register of lawyers. Any third party's intervention into the legally specified procedure of entry into the register of lawyers is inadmissible, except in the cases specified by law. And the intervention by a consultative professional organization to the European Commission, like CCBE, is particularly inadmissible because it should be even much more familiar with the competencies of its members, with the principle of autonomy and independence of the bar as well as with the principle of the rule of law. Slovenian

Bar Association does not deprive any applicant for entry or removal into/from the register of lawyers of his/her right to legal remedy, yet it cannot allow a procedure contrary to the law.

Elections of Members of the State Council of the Republic of Slovenia

The five years long term of office of the members of the State Council of the Republic of Slovenia – including that of the counsel belonging to lawyers and acting as representative of free-lance professions – expired in 2017. On these grounds, at its General Meeting held in October 2017, Slovenian Bar Association carried out all necessary procedures relating to the candidacy for a member of the State Council – the representative of free-lance professions for a new term.

As a result of the elections carried out by the National Voting and Election Committee, the existing member of the State Council belonging to the bar was re-elected as the representative of free-lance professions in the State Council.

Participation of Representatives of Slovenian Bar Association at Investigations of Law Offices

In 2017, the representatives of Slovenian Bar Association also participated in all procedures related to law office investigations in order to achieve constitutional warranties in accordance with the decision by the Constitutional Court. In 2016 the latter agreed with Slovenian 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. As a matter of fact, 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 respective amendments to the legislation have not yet been adopted by the Parliament of the Republic of Slovenia.

Cooperation at Regulation Proceedings

Slovenian Bar Association regularly participates at regulation proceedings in the filed of judiciary that are important for the bar. However, it notices that in these proceedings the Ministry of Justice has a very different approach to Slovenian Bar Association. In certain, exceptionally rare cases, the representatives of Slovenian Bar Association already make part of the working team with the Ministry of Justice, while in other cases Slovenian 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.

In 2017, too, the regulatory authorities continued the practice of submitting several draft regulations over a very short period of time, usually before national holidays or summer vacation. Moreover, a very short deadline was set for submission of comments (14 days from the receipt of the material), which Slovenian Bar Association considers to be an inappropriate moment of time. In proposing the modifications and the amendments to the Inheritance Act the proposing authority even went as far as to submit only the proposed amendments to individual articles of the act, without any explanation whatsoever of the proposed amendments and the respective reasons. Such approach by the executive branch of the authorities prevents from good information of public professionals about the proposed amendments as well as from active participation in the regulatory procedure. Therefore Slovenian Bar Association warned the Ministry and other competent authorities in writing about the breach of the Resolution on Regulatory Activity.

Likewise Slovenian Bar Association is missing the participation of the representatives of Slovenian Bar Association in the preparation of legal amendments to the legislation already at the most early phase, by joining the working teams in charge of the preparation of proposals for individual regulation. As a matter of fact, Slovenian Bar Association and the bar as part of the judiciary could contribute much more to the search of adequate solutions for the Slovene legal order.

In 2017, Slovenian Bar Association received the following bills in order to make comments within the scope of professional harmonization and/or public discussion on individual regulation: Amending Bill to the Reciprocity Identification Act (ZUVza-1), Amending Bill to the Financial Instruments Market

Bill (ZTFI), Amending Bill to the Claim Enforcement and Security Act (ZIZ-L), Bill of Collective Legal Action (ZKolT), Bill of Court Experts, Certified Appraisers and Court Interpreters, Amending Bill to the Civil Procedure Act (ZPP-E), Amending Bill to the Income Tax Act (ZDoh), Inheritance Bill (ZD) and draft Order on the Method of Execution and Financing of Legal Aid to Fishermen and draft amendment to the Order on Keeping and Maintenance of the Business Register.

Slovenian Bar Association made its comments and proposals to all bills received. All bills were also submitted for comments to lawyers. The comments and the proposals made by Slovenian Bar Association are published on the web site www.odv-zb.si, under the heading "Lawyer", the sub-heading "Legislation – Comments, Proposals by Slovenian Bar Association.

Besides, Slovenian Bar Association participated in 2017 in a few sessions by the principal bodies of the Parliament and by the State Council of the Republic of Slovenia that discussed the regulations relevant for the bar.

Training Courses for Lawyers

In 2017, too, the Lawyers' Academy with Slovenian Bar Association organized numerous training courses and workshops for members of Slovenian Bar Association, within the scope of its permanent training in addition to the traditional Lawyers' School in April 2017. In addition to the training courses on legal subjects the Lawyers' Academy aimed in 2017 on training lawyers in computer literacy.

The training courses were held at the registered office of Slovenian Bar Association as well as in all three regional centers. Since 2016 the offices of Slovenian Bar Association are equipped with computer equipment for related workshops, requiring practical work of every participant (e. g. workshops on the use of the online Land Register – eZK-1, workshops on the use of the Law Office computer program for management of law offices). Moreover, in 2017, the Lawyers' Academy organized for the first time the training on the use of the Law Office computer program dedicated to the office staff of law offices. All training courses included substantial materials that are published on the web site of Slovenian Bar Association.

Due to the changes in the civil procedural law in 2017 the Lawyers' Academy as one of the first educational institutions provided for training courses on the respective legal novelties within the scope of the so-called Civil Procedural School. Only in Ljubljana the courses were attended by more than 900 participants and training courses were also organized in all three regional centers. The attendance of training courses is increasing and there are even waiting lists for some minor workshops.

Foundation of a Mediation Center

In 2017 the Lawyers' Academy with Slovenian Bar Association launched a Mediation Center. It constitutes a step forward in the lawyers' efforts for developing the culture of peaceful and amicable settlement of disputes, in turn reducing the workload of law courts. On the other hand the Mediation Center offers the possibility of practicing mediation to all interested lawyers and thereby offers the opportunity for a potentially new specialization in the lawyers' profession.

Supported by joint efforts of lawyers, the Mediation Center with the Lawyers' Academy of Slovenian Bar Association aims at becoming the biggest out-of-court private mediation center on the level of all Slovene institutions. The activity of the Mediation Center with the Lawyers' Academy of Slovenian Bar Association may also be followed on the web site (<http://www.odv-zb.si/mediacijski-center/predstavitev/poslanstvo>).

European Lawyers Day

Slovenian lawyers celebrated the European Lawyers Day by organizing two events. On 12 October, the Ljubljana Regional Assembly of Lawyers organized a lecture with the title "Lawyers' Due Diligence at E-Operations". This time the lecture was intended not only for lawyers, but also for general public.

On 25 October 2017, Slovenian lawyers also celebrated the European Lawyers Day with interesting short discussions on "Ethical Aspects of the Use of New Technologies in the Bar and Protection of Citizens", held at the Law School of the University of Ljubljana and organized by Slovenian Bar Association in cooperation with the Lawyers' Academy of Slovenian Bar Association and the

Law School of the University of Ljubljana. The lecture dedicated to the students of law scored very high attendance.

Traditional Day of Lawyers' Pro Bono Legal Aid

In 2017, the traditional Day of Lawyers' Pro Bono Legal Aid lasted as many as five days, precisely from 18 December till 22 December 2017. Within the scope of the Day of Lawyers' Pro Bono Legal Aid almost 500 lawyers all over the country offered to clients free of charge legal aid in an organized form for five days, although many members of Slovenian Bar Association provide such pro bono aid daily, in accordance with the Lawyers' Code of Professional Ethics. For the first time, lawyers also provided their pro bono legal aid services beyond their law offices, in the premises of local communities. The importance of the pro bono legal aid was also recognized by the honorary patronage of the President of the Republic.

The public response to the Day of Lawyers' Pro Bono Legal Aid in 2017 was very positive, in particular due to the new practice (extended duration, consultancy organized in cooperation with local communities even beyond law offices). In this way lawyers brought their lawyers' services closer even to those individuals who in the past hesitated to see the lawyer because lawyers' services were exclusively limited to law offices and/or because of they could not profit from the lawyers' pro bono legal aid due to the time limited availability.

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