

(Self- Regulation or Heteronomy – Lawyers' Independence in Danger?)

Short State of Play Report - Slovenia

In this article I would like to point out to a few recent interventions by the Government into the self-regulation of the bar in Slovenia wherefore the autonomy and the independence of the bar are getting more and more threatened.

Legal Framework of the Autonomy and of the Independence of the Bar in Slovenia

Article 137 of the Constitution of the Republic of Slovenia specifies that the bar as part of the judiciary is an autonomous and independent service regulated by law. Accordingly, the Constitution of the Republic of Slovenia explicitly defines the bar as a constitutional category and it determines its social function. The Government provides for specific implementation of the constitutional foundations by passing a law.

Hence the Government shall pass such Bar Act whereby to regulate all issues in the manner envisaged by the Constitution, through a detailed specification of the bar as a constitutional category.

Republic of Slovenia does not pursue this constitutional task. Only in the last three years it intervened in an unauthorized manner into the constitutional category of autonomy and independence of the bar through as many as two legislative amendments. Moreover, it intervened into the self-regulation of the bar through an arbitrary action of the competent Minister of Justice, such as briefly described in the continuation.

1) Intervention by the Government into the Lawyers' Tariff

The Bar Act specifies that the lawyers' tariff shall be adopted by Slovenian Bar Association, subject to a preliminary consent of the Minister in charge of justice. It ensues from the above legal provision that Slovenian Bar Association is financially autonomous and independent and that in giving his consent in writing the Minister is bound by the constitutionally secured rights of the bar.

In Slovenia Slovenian Bar Association adopted the new lawyers' tariff at its General Meeting of 23 September 2014. The Minister in charge of justice gave his consent to the lawyers' tariff and the new lawyers' tariff entered in force on 10 January 2015.

The lawyers' tariff should be used for charging all lawyers' services, even in the cases to be paid by the Government, but it does not work like that. As a matter of fact, the Government has arbitrarily intervened into the right of the Slovenian Bar Association to determine the lawyers' tariff by amending the Bar Act. According to the amended Bar Act the lawyer appointed ex officio and the lawyer providing pro bono services (in both cases paid by the Government) is only entitled to half of the remuneration earned according to the lawyers' tariff. Furthermore the Bar Act specifies that in such cases any other agreements shall be considered null and void (the new Article 17(5) of the Bar Act).

Due to such arbitrary intervention by the Government the self-regulation in determining the lawyers' tariff in Slovenia only applies to the services that are not paid by the Government.

Consequently, Slovenian Bar Association and the lawyers were forced to protect their constitutional rights by applying the legal remedies at their disposal before the Constitutional Court of the Republic of Slovenia. The arbitrary intervention by the Government into the self-regulation of the bar in the part relating to the payment for lawyers' services has not yet received any judicial epilogue.

2) Intervention by the Government in Determining the Registration Fee for the Register of Lawyers

Article 42 of the Bar Act specifies that Slovenian Bar Association shall provide for harmonized development of the bar, shall adopt the Code of the Lawyers' Professional Ethics and shall perform other tasks specified by law. A detailed description of the tasks imposed on Slovenian Bar Association and its bodies are specified in the by-laws of Slovenian Bar Association that shall be approved by the Government of the Republic of Slovenia. The by-laws of Slovenian Bar Association specify the decision-making on the amount of the registration fee for the register of lawyers as one of the tasks imposed on the General Meeting of Slovenian Bar Association.

On these grounds Slovenian Bar Association adopted the decision dated 16 April 2016 on the increase of the registration fee for entry into the register of lawyers. The competent Ministry of Justice disagreed with the increase, but with reference to the amount of the registration fee in question the applicable regulations did not envisage any Government's right to intervene into the self-regulation of the bar. Accordingly, the Government carried out the intervention through the amendment of the Bar Act.

The amendments of the Bar Act entered in force on 1 July 2016. Thereby the General Meeting of Slovenian Bar Association was deprived of the competence for decision-making on the amount of the registration fee for entry into the register of lawyers.

The above case involves an additional striking example of the Government's intervention into the self-regulation of the bar.

3) Intervention by the Government in Determining the Value of the Point of the Lawyers' Tariff

A third example of the Government's intervention into the self-regulation of the bar in Slovenia involves the refusal by the Minister of Justice to approve the rise in the value of the point of the lawyers' tariff that constitutes the basis for charging for lawyers' services specified in the lawyers' tariff.

The lawyers' tariff specifies the value of the point of the lawyers' tariff in euros¹. Furthermore it specifies that the value of the point is subject to variation with reference to the consumer price inflation in the Republic of Slovenia, such as identified by Statistical Office of the Republic of Slovenia, or rather with reference to the growth of judges' salaries. The value of the point may change in the case when the consumer price inflation or the growth of judges' salaries in the period since the last rise exceeds 10 percent. The change of the value of the point of the lawyers' tariff is subject to the decision of the Board of Lawyers of Slovenian Bar Association, but their decision in compliance with the above standards is subject to the approval by the Minister in charge of justice.

On these grounds the Board of Lawyers of Slovenian Bar Association came to the conclusion on 18 December 2015 that the terms and conditions for the change of the value of the point of the lawyers' tariff had been fulfilled and it adopted the

¹ The current value of the point is EUR 0.459.

decision on the rise of the value of the point of the lawyers' tariff from EUR 0.459 to EUR 0.610. The above rise of the value of the point of the lawyers' tariff merely constitutes the harmonization of the value of the point with the inflation. Conforming to the procedure specified by the lawyers' tariff for the change of the value of the point Slovenian Bar Association applied to the Minister of Justice for the respective approval, but the latter refused to give his consent to the rise of the value of the point in spite of the fact that the respective terms and conditions were satisfied.

The above case, too, involves a serious Government's intervention into the self-regulation, the autonomy and the independence of the bar. Therefore, Slovenian Bar Association was forced to file against the Minister a judicial proceeding before the Administrative Court in order to protect the rights of the bar. However, the case has not yet received any judicial epilogue either.

Systematic Disintegration of the Bar in Slovenia in the Last Fifteen Years

In addition to the above interventions, the bar in the Republic of Slovenia has been facing gradual systematic disintegration already for the last fifteen years. The Government has been gradually depriving the bar of its competencies in many domains, thereby impairing both the judicial role of the bar and its financial independence.

By amending the Notaries Act, the Land Register Act and by passing the new State Attorneys Office Act the Government transferred quite a few lawyers' competencies to notaries and attorneys general (newly referred to as state attorneys). The Inheritance Act is also envisaged to undergo amendments and thereby some more lawyers' competencies will pass to notaries. At the year-end 2017 the Ministry of Justice also drafted the new Lawyers' Professional Examination Bill that was supposed to replace the actual regulation of the lawyers' state examination. Its outline shows evident tendencies for discriminatory approach to the bar. It classifies the pupils into significantly worse position than other members of the legal profession that wish to become judges, prosecutors, notaries or state attorneys, however without any legal ground whatsoever and in spite of the fact that the Constitution of the Republic of Slovenia specifies the bar as part of the judiciary.

The constantly growing narrowing of lawyers' competencies in the judiciary, the intervention into the autonomy of the bar and the intervention into the self-regulation have brought the bar in Slovenia to economic weakening and to the

impairment of its role in the judiciary, which threatens the primary role of the bar, i.e. the representation of clients' rights in court and other procedures.

Due to the alarming situation, Slovenian Bar Association ordered, for the first time in its 150 years long history, the preparation of a study on the economic situation of the bar and in 2017 it drafted a new Bar Bill together with experts from two law schools in Slovenia.

With reference to the situation described above, the protection of the autonomy and of the independence of the bar as well as of its right to self-regulation will be one of the priority tasks of Slovenian Bar Association in 2018.

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