CCBE PECO COMMITTEE COMMENTS ON THE FINAL DRAFT OF "THE LEGAL PROFESSION ACT" – SERBIA

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The Parliament of Serbia will examine and discuss in the next month of March the text of "**The Legal Profession Act**" which has been sent to the CCBE PECO Committee (translated in English).

As we were told, the text has been prepared by a Working Group whose members were appointed by the Serbian Ministry of Justice.

An analysis of this text has been conducted having as reference **a set of common principles on the Legal Profession**, at an International and European level.

The **CCBE** has adopted a foundation text in this field, the "**Charter of Core Principles of the European Legal Profession**" (hereinafter referred to simply as the "Core Principles"), approved at the Plenary Session in Brussels on 24 November 2006. The Charter is "aimed at applying to all of Europe, reaching out beyond the member, associate and observer states of the CCBE"[1]. It contains ten Core Principles which are common to the national, international and European rules regarding the legal profession.

The core principles are, in particular:

(a) the independence of the lawyer, and the freedom of the lawyer to pursue the client's case;

(b) the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy;

(c) avoidance of conflicts of interest, whether between different clients or between the client and the lawyer;

(d) the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer;

(e) loyalty to the client;

(f) fair treatment of clients in relation to fees;

(g) the lawyer's professional competence;

(h) respect towards professional colleagues;

(i) respect for the rule of law and the fair administration of justice; and

(j) the self-regulation of the legal profession.

The Plenary Session of the CCBE also adopted the **Code of Conduct for European Lawyers**[2] on 28 October 1998 (hereinafter Code of Conduct). This was subsequently amended during the Plenary Sessions on 28 November 1998, 6 December 2002 and 19 May 2006.

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[1] Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers, available (with comments) at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1249308118.pdf [accessed 11 February 2011]

[2] see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1249308118.pdf [accessed 11 February 2011]; The purpose of the Code is clearly stated in paragraph 1.3:
«1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of "double deontology", notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.
1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

This analysis of the draft text of "The Legal Profession Act" has been conducted taking into account also the fundamental principles expressed at an international and European level by:

- **recommendation Rec (2000) 21** of 25 October 2000 of the Committee of Ministers of the Council of Europe to Member States on the freedom of exercise of the profession of lawyer (hereinafter referred to as "Recommendation Rec(2000)21")[3]
- **Basic Principles on the Role of Lawyers**, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August to 7 September 1990 (hereinafter "Basic Principles 1990")[4]
- **jurisprudence** of the European Court of Human Rights and the European Court of Justice
- **Universal Declaration** of Human Rights
- **European Convention** on Human Rights
- European Union **Charter** of Fundamental Rights
- **European Parliament Resolution** on the legal professions and the general interest in the functioning of legal systems, 23 March 2006 (hereinafter "European Parliament Resolution 2006")[5]
- **Directive 98/5/EC** of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.[6]

Other CCBE relevant documents have also been taken into account, particularly:

- the "Minimum standards for European Lawyers' Professional Indemnity Insurance[7]"
- the "Recommendation On Continuing Training[8]"
- the "Recommendations On Disciplinary Process For The Legal Profession[9]"

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- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to a lawyer's cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he or she belongs to the extent that they are consistent with the rules in this Code».

As regards the field of application, the Code applies to "lawyers as they are defined by Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Associate and Observer Members of the CCBE".

3 Recommendation Rec (2000) 21 of 25 October 2000 of the Committee of Ministers of the Council of Europe to member states on the freedom of exercise of the profession of lawyer , available at: https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=533749&SecMode=1&DocId=370286&Usage=2 [accessed 11 February 2011]

4 United Nations, Basic Principles on the Role of Lawyers, 7 September 1990, available at: http://www.unhcr.org/refworld/docid/3ddb9f034.html [accessed 11 February 2011]

5 http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0108+0+DOC+XML+V0//EN [accessed 11 February 2011]

6 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998L0005:20070101:EN:PDF [accessed 11 February 2011]

7 http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/minimum_standards_on1_1203412931.pdf [accessed 11 February 2011]

8 http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/ccbe_recommendation_1_1183977067.pdf [accessed 11 February 2011]

9 http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/CCBE_Recommendations1_1190034926.pdf [accessed 11 February 2011]

The analysed text of the final draft of “The Legal Profession Act” consists of 95 articles divided on XIII Chapters, titled as follows:

I – General Provisions

II – Conditions for engaging in Legal Profession

III – Rights and Duties of Attorneys-at-law

IV – Temporary Termination and Prohibition of Legal Profession

V – Forms of Work

VI – Law Trainees

VII – The Bar Associations

VIII – Disciplinary Responsibility

IX – Termination of the Right to engage in Legal Profession

X – Protection of Rights

XI – Law Academy

XII – The Attorney Exam

XIII – Transitional and Final Provisions

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1. INDEPENDENCE AND SELF-REGULATION

It should be reminded that the first (a) and the last (j) of the Core Principles – which are strictly connected – are the "independence of lawyers" and the "self-regulation of the legal profession". As the Commentary of the Core Principles highlights (under the principle a), "*self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer*"; and, as regards self-regulation, "*the CCBE is convinced that only a strong element of self-regulation can guarantee lawyers' professional independence vis-à-vis the state, and without a guarantee of independence it is impossible for lawyers to fulfil their professional and legal role*".

Under the paragraph "Professional association of lawyers", principle n. 24 of the Basic Principles on the Role of Lawyers 1990 declares:

> «*Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference*».

As regards the European provisions, the Recommendation Rec (2000)21 of the Committee of Ministers provides, under Principle V – Associations:

«*2. Bar associations or other professional lawyers' associations should be self-governing bodies, independent of the authorities and the public*».

Finally, the European Parliament Resolution 2006 declares at point 4 that the European Parliament:

> «Reaffirms *the importance of rules which are necessary to ensure the independence, competence, integrity and responsibility of members of the legal professions so as to guarantee the quality of their services, to the benefit of their clients and society in general, and in order to safeguard the public interest*».

Analysing the content of "The Legal Profession Act" under the perspective of these core issues, several provisions appear to be intended to ensure independence and self-regulation.

Amongst the "General Provisions", **article 2** declares the "**Autonomy, independence and public importance of legal profession**".

A key provision in this article is that the autonomy and independence of legal profession is provided, *inter alia*, by the "organisation of attorneys-at-law in the **Bar Association of Serbia** and **Bar Associations** within it as **obligatory, autonomous and independent organisations** of attorneys-at-law".

Moreover, **the Bar Associations can adopt "general legislation"** and **decide on "admission** to the legal profession **and the termination** of the right to practise law".

However, the strength of the general declarations set forth in the above quoted articles 2 have to be assessed through an analysis of the specific provisions of the Chapter VII, regulating the Bar Associations.

Article 63 remarks that:

> «*Bar Association of Serbia and Bar Associations in its constitution are autonomous, independent and obligatory professional organizations of attorneys-at-law, established by the law and responsible for execution of public powers and the conduct of affairs of common interest, in accordance with the law and their statutes*».

Articles 65 and 66 provide for public authorities, duties and powers conferred to the Bar Associations of Serbia and the local Bar Associations (as listed in article 64); particularly, they:

- manage the "directory of lawyers", deciding on applications for entry, deletion and revocation;
- take decisions on initiating and conducting disciplinary proceedings;
- organise and regulate the Bar exam;
- make the statute and other general enactments;

- represent the interests of attorneys-at-law before the state and other agencies and organizations;
- issue opinions on draft laws and other regulations.

Composition and functioning of the Bar Association of Serbia and the local Bar Associations are set forth in the following articles 67 (The Bodies of the Bar Association of Serbia), 68 (Assembly of the Bar Association of Serbia) and 69 (The Bodies of the Bar Associations within the Bar Association of Serbia).

This set of articles is of particularly relevance, as it is a **good benchmark to assess the true independence and power of self-regulation** of the Legal Profession.

Under these provisions, a **central role** is given to the **Assembly** of the Serbian Bar Association.

The **Assembly consists only of "representatives of Bar Associations** that are part of the Serbian Bar Association" (art. 68).

This is a key provision that ensure that the fundamental organ of the Legal Profession is free from any external influence that could have undermined its independence.

Indeed, the Assembly not only is in charge to adopt the Statute and other general regulations, but is the democratic organ (consists of representatives of Bar Associations) which elects the President, First Vice-President, Second Vice-President and Disciplinary Prosecutor (or, better, it elects the Second Vice-President as specified in article 67.5).

Finally, "*procedure of election, tenure of office, dismissal, scope of work and composition*" of the bodies of the Bar Association of Serbia "*shall be determined by the Statute*" (art. 67.7). Again, this provision ensures - through self-regulation – that any external influence on the functioning of the Bar Association should be avoided.

In conclusion, **it can be affirmed that several provisions of "The Legal Profession Act" combines to ensure a real application of the principles of independence and self-regulation of lawyers and their professional organisations**.

2. CONFIDENTIALITY – PROFESSIONAL SECRET

Principle (b) of the Core Principles affirm "*the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy*".

As the related Comment points out: «*Without the certainty of confidentiality there can be no trust. The Charter stresses the dual nature of this principle - **observing confidentiality is not only the lawyer's duty, - it is a fundamental human right of the client**. The rules of "legal professional privilege" prohibit communications between lawyer and client from being used against the client*».

It is important to stress that this principle distinguishes between confidentiality as a "*fundamental human right of the client*" and professional secret as a "*lawyer's duty*".

The Code of Conduct provides, at paragraph 2.3.1:

> «*It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.*
>
> *The lawyer's obligation of confidentiality serves the interest of the ad- ministration of justice as well as the interest of the client. It is therefore entitled to special protection by the State*».

The importance of confidentiality and professional secret is highlighted in all the fundamental International and European provisions.

Principle 22 of the Basic Principles 1990 states on confidentiality:

> «*Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential*».

Instead, the Recommendation Rec (2000)21 emphasizes on the professional secret, and establishes, under the "*Principle III – Role and duty of lawyers*":

> «*Professional secrecy should be respected by lawyers in accordance with internal laws, regulations and professional standards. Any violation of this secrecy, without the consent of the client, should be subject to appropriate sanctions*».

The draft of the Serbian "Legal Profession Act" includes the professional secret among the "basic duties" stated in article 15:

> «*Attorney-at-law shall:*
>
> *…*
>
> *3) keep a professional secret*»

Article 20 of the draft (Attorney's Secret) provides as follows:

> «*(1) Attorney-at-law shall, in accordance with the Statute and the Code, keep as a professional secret and ensure that also persons employed in his law office do the same, all that his client or his authorized representative entrusted to him or that he otherwise learned or acquired in a case where he provides legal aid, in preparation, during and after the termination of representation.*
>
> *(2) When attorney-at-law has the right to withdraw from the obligations set forth in paragraph 1 this Article shall be determined by the Statute and Code*».

However, **in the text of the draft Law there are no provisions directly regarding confidentiality, intended as a (fundamental) right of the client**; that means that no provisions ensure the prohibition of "*communications between lawyer and client from being used against the client"* as stressed in the comment of Principle (b) of the Core Principles.

Even if it can be affirmed that there are provisions in the draft Law that oblige lawyers to keep professional secrecy, it is also true that this could be bypassed from an order given by any authority to reveal communications between lawyer and client.

It is highly recommendable to add a specific provision in the draft Law ensuring the right of confidentiality in order to protect the fundamental rights of the clients.

However, it should also be considered that usually the provisions related to the right to confidentiality can be found on the procedural codes. This could also be the case for Serbia.

3. CONFLICTS OF INTEREST – LOYALTY TO THE CLIENT – FAIR TREATMENT OF CLIENTS IN RELATION TO FEES

Under this title there are several principles involved, all of them regarding the relationship lawyer-client; for this reason they will be analysed collectively. As specifically regards the Core Principles:

- «*Principle (c) – avoidance of conflicts of interest, whether between different clients or between the client and the lawyer*»
- «*Principle (e) – loyalty to the client*»
- «*Principle (f) – fair treatment of clients in relation to fees*»

The draft "Legal Profession Act" regulates the **conflict of interest** in **article 19**, stating "*The obligation to refuse to provide legal aid*":

> «*Attorney-at-law is obliged to refuse providing legal aid:*
>
> *1) if he represented or defended the opposing party in the same legal matter;*
>
> *2) if he was a law trainee in a law office in which the same matter is represented or defended, or the opposing party is represented or defended;*

3) *if he is a member or was a member of a joint law office or law partnership, where the same matter was represented or defended, or the opposing party was represented or defended;*

4) *if he in the same matter acted as a judicial office or official in the state body, territorial autonomy or local self-government unit;*

5) *If the interests of party seeking legal aid is in conflict with his interests or those of his close relatives, friends, associates or clients, in accordance with the statute and the Code of Professional Ethics;*

6) *in other cases stipulated by law, Constitution and Code*».

However, regulation of conflict of interest is a typical **deontology and disciplinary issue**[10].

Indeed, **article 75** of the draft Law considers the case of "*providing legal aid in cases where attorney-at-law is obliged to refuse to provide legal aid*" as a "*serious breach of duty by attorney-at-law*". This means that, under article 77(4), an "*attorney-at-law can be fined or erased from the directory of attorneys-at-law*".

As it is well highlighted by the Comment to Principle (e) of the Core Principles, loyalty to the client is strictly related to regulation of conflict of interest, as well as independency and professional secret:

«*To be loyal to the client, the lawyer must be independent (see principle (a)), must avoid conflicts of interest (see principle (c)), and must keep the client's confidences (see principle (b))*».

Finally, as regards the principle (f) of "fair treatment of clients in relation to fees", the draft law provides, at article 23 (Awards and compensation of expenses):

«*(1) Attorney-at-law is entitled to fees and expenses for his work in accordance with the tariff, approved by the Bar Association of Serbia.*

(2) The reward for attorneys work is determined by attorney tariff depending on the type of proceedings, actions taken, the value of the dispute or the amount of prescribed sanctions.

(3) The reward for defence ex officio is determined by the act passed by the Minister of Justice.

(4) Attorney-at-law is obliged to issue a billing to client on rewards and compensations for actions taken and expenditures made.

(5) Calculation of costs and fees of lawyers is a credible instrument in execution».

On the other hand, it is considered (article 75) as a "*serious breach of duty by attorney-at-law*":

«*asking for compensation greater than the fees prescribed and refusing to issue a bill to the client for the amount received*».

Finally, under this title can be discussed the issue related to professional liability insurance.

It should be reminded that CCBE approved the "Minimum standards for European Lawyers' Professional Indemnity Insurance"[11].

The draft Law provides at article 37 for a "Mandatory professional liability insurance":

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[10] see also the Code of Conduct (quoted), paragraph 3.2:
«3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.
3.2.2. A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also when- ever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.
3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.
3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members».

[11] available at: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/minimum_standards_on1_1203412931.pdf (last view on 10 February 2011)

«*(1) Attorney-at-law is obliged to conclude an agreement on compulsory professional liability insurance with organizations registered for this type of insurance.*

(2) The Bar Association may conclude a contract on collective professional liability insurance for all attorneys registered in its directory of attorneys-at-law.

(3) The Bar Association of Serbia shall determine the minimum amount of insurance to the detriment of professional responsibility.

(4) The Bar Association shall withhold issuance or renewal of ID to attorney-at-law who has not concluded a contract of insurance, except when there is insurance in paragraph 2 of this Article».

In conclusion, it seems that **the draft "Legal Profession Act" contains a set of provisions which satisfy all the principles of loyalty to the client, regulation of conflict of interests and fair treatment in relation to fees**. It also **comprises an obligation related to professional liability insurance** (leaving to the Serbian Bar Association to set forth the minimum specific conditions), satisfying the standards approved by the CCBE.

4. DIGNITY AND HONOUR OF THE LEGAL PROFESSION – RESPECT TOWARDS PROFESSIONAL COLLEAGUES – RESPECT FOR THE RULE OF LAW AND THE FAIR ADMINISTRATION OF JUSTICE.

This title comprises three of the Core Principles:

- «*Principle (d) – the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer*»
- «*Principle (h) – respect towards professional colleagues*»
- «*Principle (i) – respect for the rule of law and the fair administration of justice*».

The Comment on Principle (d) explains that «*To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession*».

The draft "Legal Profession Act" recognises (article 2.2) that "*Providing legal aid*" is an "*activity of public interest*". This is, in turn, a recognition of "*dignity and honour of the legal profession*".

It is also expressed that conditions for "registering in the directory" (article 6) are, *inter alia*:

«*6) no criminal record for a felony that would make an applicant unworthy of confidence for the practice of law*» and

«*(2) Shall not be considered trustworthy for the advocacy an applicant by whose life and work, in accordance with generally accepted moral standards and the Code, one may conclude that he would not consciously engage in legal profession and preserve its reputation*».

It constitutes a "*basic duty*" of the lawyer (article 15.1 n.4)) "*to protect the reputation of the legal profession*" both "*in the professional work and private life that is available to the public*".

It is also provided (article 21) that «*Attorney-at-law shall not engage in professions that are contrary to the honour and independence of the legal profession*».

Finally, article 75 provides for "responsibility for misconduct", ensuring disciplinary protection to all the principles dealt with under this title:

«*(1) Attorneys-at-law and law trainees are responsible for professional and conscientious practice of law and preservation of its reputation.*

(2) Attorneys-at-law and law trainees are responsible for disciplinary minor and major violations of duty and honour of legal profession, regulated by the Statute of the Bar Association of Serbia.

(3) A serious breach of duty by attorney-at-law and the reputation of legal profession is any violation of duty and honour of legal profession under law, statute and the Code, and particularly evident bad faith in the work within legal profession, providing legal aid in cases where attorney-at-law is obliged to refuse to provide legal aid, business activities that are contrary to the honour and independence of attorneys-at-law, injury of duty to keep a secret, lack of continuous professional education and training in accordance with the adopted program, asking for compensation greater than the fees prescribed and refusing to issue a bill to the client for the amount received.

(4) Minor violations of duties and good practice of legal profession are violations of the duty, honour and the Code of Professional Ethics, of less importance».

5. THE LAWYER'S PROFESSIONAL COMPETENCE – CONTINUING TRAINING

Professional competence of lawyers is a key point for the CCBE. It constitutes one of the Core Principles (g); it has been the object of several documents and position papers from the CCBE.

In 2000 the CCBE issued the "Resolution on Training for Lawyers in the EU", focusing on harmonisation of the training quality among the Bars and Law Societies of Europe[12].

The "Recommendation on Continuing Training" was then approved in 2003[13], followed by the "Model Scheme for Continuing Professional Training" in 2006[14] and the "Recommendation on Training Outcomes for European Lawyers" in 2007[15].

The Code of Conduct provides, at paragraph 5.8 that «*Lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession*».

It should also be reminded that the Recommendation Rec (2000)21– under Principle II (Legal education, training and entry into the legal profession) – states:

«*2. All necessary measures should be taken in order to ensure a high standard of legal training and morality as a prerequisite for entry into the profession and to provide for the continuing education of lawyers*».

Moreover, according to the Basic Principles 1990:

«*9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law*».

The draft "Legal Profession Act" contains several provisions regarding training, from access to profession to continuing professional training.

A key provision on this matter is article 86, which states for the establishment of the Law Academy:

«*(1) Serbian Bar Association and bar associations within its constitution hereby establish the Law Academy, a special body responsible for the continuous professional training of attorneys-at-law, law trainees, graduate lawyers and persons employed in law offices and law partnerships, for the improvement of theoretical and practical knowledge and skills of attorneys, necessary for professional, independent, autonomous, effective and ethical legal profession, the specialization of attorneys-at-law and the issuance of certificates of specialization in a particular area of law and the legal profession.*

[12] available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/form_enpdf1_1183977205.pdf (last view on 10.02.2011).
[13] see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/ccbe_recommendation_1_1183977067.pdf (last view on 10.02.2011).
[14] see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf (last view on 10.02.2011).
[15] see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf (last view on 10.02.2011).

(2) The establishment, organization and operation of the Law Academy and the adoption of general and specialized training shall be determined by the Bar Association of Serbia and other general acts».

The need for ensure a high quality of services through the obligation for continuing professional training is set forth by art. 17 (Professional Development):

«*(1) Attorney-at-law is obliged to continuously acquire and improve knowledge and skills necessary for professional, independent, autonomous, effective and ethical practice of law, in accordance with a program of professional development adopted by the Bar.*

(2) The failure to fulfil obligations under Paragraph 1 of this Article constitutes a violation of discipline which is prescribed by law and statute.

(3) Attorney-at-law who has a law trainee is obliged to provide him proper conditions for work and training in accordance with the purpose of trainee practice, to implement the plan and training program and to supervise trainee's work and his professional development ».

On the same perspective, article 75 states that it constitutes a "*serious breach of duty by attorney-at-law*" the "*lack of continuous professional education and training in accordance with the adopted program*".

Hence, the draft Law provides only for the obligation to undertake continuing training, conveniently leaving to self-regulation the role to establish the specific terms and conditions for it.

The set of provisions contained in the "Legal Profession Act" is focused on establishing minimum but fundamental rules in order to ensure the high quality of legal services.

It will be, however, a duty of the Serbian Bar Association to implement these rules and to adopt a system of continuing professional training in accordance to the Model Scheme adopted by the CCBE.

6. ADVERTISING

Advertising is a sensitive issue, as there are very different regulations in the EU Member States.

In several countries it was – especially in the past – prohibited for lawyers even to inform the public about their activities, whereas in other countries there is a substantial freedom of advertising for legal services.

The CCBE Code of Conduct provides for advertising at section 2.6 (Personal publicity):

«*2.6.1. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.*

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.».

The draft Serbian Law provides, instead, for a "Prohibition of advertising" under article 24:

«*(1) Attorneys-at-law, joint law offices and law partnerships cannot advertise.*

(2) The prohibition of advertising and permissible methods of representation shall be regulated by the Statute and the Code».

It should however be observed that the general prohibition contained in the first paragraph is mitigated by the second paragraph, where there is an express reference to "permissible methods of representation". The regulation of these methods is then left to the Statute and the Code (self-regulation).

The draft Law provisions should be interpreted as a general prohibition of advertising in a commercial sense, intended as a method of catching caseload in a commercially aggressive way (i.e. overemphasizing qualities and services of the lawyer or the Law firm).

In this perspective, it should be remarked that also the Code of Conduct requires that "*the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession*".

In conclusion, the provisions of the draft Law **can be considered admissible** compared to the Code of Conduct, **providing that the self-regulation to be approved by the Serbian Bar Association will not unnecessarily restrict the "*permissible methods of representation*"**.

7. FOREIGN LAWYERS

On 16 February 1998 the European Parliament and the Council adopted the Directive 98/5/EC (quoted above), with the purpose (art. 1) of "*facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained*".

As it is specified in the "Guidelines on the Implementation of the Establishment Directive[16]" (98/5/EC of 16th February 1998) issued by the CCBE for Bars and Law Societies in the European Union, there are "*two conditions which must be satisfied before a lawyer is entitled to take advantage of the Establishment Directive: first, the lawyer must have acquired one of the titles listed in Article 1.2(a) of the Directive; and second, the lawyer must be a citizen of one of the Member States of the European Union*".

The Directive allows lawyers "*to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5*", and precisely:

> «*1. Subject to paragraphs 2 and 3, a lawyer practising under his home- country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and **may, inter alia, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State**. He shall in any event comply with the rules of procedure applicable in the national courts.*
>
> *2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.*
>
> *3. For the pursuit of activities relating to the **representation or defence of a client in legal proceedings** and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an 'avoué' practising before it.*
>
> *Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.*».

Lawyers are required to register with the competent authority of the host Member State (article 3).

After the effective and regular pursuit of activity for an unbroken period of three years in the host Member State, the lawyer is deemed to have acquired the skills necessary to completely integrate into the profession of lawyer in that Member State. However, if such activity does not include the law of the host Member State or Community law, lawyers may be required to take an aptitude test limited to the law of procedure and the rules of professional conduct of the host Member State (article 10).

The Serbian "Legal Profession Act" contains several provisions referred to "foreign lawyers'.

[16] see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/guid_enpdf1_1181225044.pdf [accessed 11 February 2011]

Article 14, titled "*Registration in the directory of attorneys - foreign nationals*", provides as follows:

> «*(1) A foreign national may be registered in the directory of attorneys-at-law - foreign nationals if he practices law in his state of origin in accordance with the laws of that state and if, depending on the type of registration, meets the requirements of paragraphs 3 and 4 of this Article.*
>
> *(2) Directory of attorneys-at-law foreign nationals is made up of registers A and B.*
>
> *(3) To enter in the register A directory of lawyers foreigners, applicant must meet the requirements of Article 6 Paragraph 1 Subparagraphs 4-11 of this Act.*
>
> *(4) To enter into the register B directory of lawyers foreigners, applicant must meet the requirements of Article 6 Paragraph 1 Subparagraph 2 of this Act.*
>
> *(5) With an application for registration of a foreign citizen lawyer he is obliged to furnish evidence under Article 7 of this Act both in the original and certified translation into Serbian, not older than three months, proof of citizenship of the state whose citizen he is and certificate of the bar association of which he is a member certifying that in the state of origin he has the status of attorney-at-law*».

Hence, the two directories (A and B) should apply depending on the applicant passed the Bar exam and the Attorney-at-law exam *in the Republic of Serbia* (B) or not (A).

According to article 13 paragraph (4):

> «*Attorney-at-law listed in the Register B of the directory of attorneys-at-law - foreign nationals who is at least three consecutive years practicing law in the Republic of Serbia, is entitled to apply for entry in the list of local attorneys-at-law without examination of the requirements for entry*».

Article 25 states that a foreign lawyer registered in the directory A can only give "*oral and written legal advice and opinions regarding the application of the law of his home Country and international law*"; hence, Serbian law is not included in this provision.

Vice versa, legal profession of a foreign citizen registered in the directory B, is "*equated with the activities of domestic attorney-at-law, provided that in the period of three years from the date of registration, he can act in the Republic of Serbia only in conjunction with a local counsel*".

Comparing the discipline of the draft "Legal Profession Act" to the European provisions, it should be remarked that the first applies generally to all "foreign lawyers", whereas the second applies, of course, only to citizens of any Member State of the European Union.

It can be questioned whether provisions on Registers A and B comply with the Directive 98/5/EC:

1) Register A allows for registration in compliance with the Directive 98/5/EC but does neither grant the right to integrate under article 13 paragraph (4)[17] nor the right to practice in Serbian Law (article 25 paragraph (1));
2) Register B does not comply because article 14 paragraph (4) in connection with article 6 paragraph (1) provide for passing the bar exam and the attorney-at-law exam in the Republic of Serbia.

Finally, it should be noted that the draft Law requires as a condition for registering in the directory of attorneys, inter alia, the "*citizenship of the Republic of Serbia*" (article 6).

In the EU, of course, the only relevant citizenship should be one of any Member State[18].

It should be also noted that Serbia is not obliged to comply with the Lawyers Directives until it becomes a Member of the EU. However, the Serbian authorities may apply the EU standards already before accession if they wish to do so.

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[17] Only attorney-at-law listed in the Register B who at least three consecutive years is practicing law in the Republic of Serbia, is entitled to apply for entry in the list of local attorneys-at-law without examination of the requirements for entry

[18] see the European Commission infringement procedure against Bulgaria for a similar provision: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1625&format=HTML&aged=0&language=EN&guiLanguage=en

8. CONCLUSIONS

The “Legal Profession Act” is clearly aiming to ensure a modern system of regulation of the profession of lawyers in Serbia.

The Law seems to reach a good equilibrium between State rules and self-regulation, which is a fundamental guarantee for an autonomous and independent performing of the legal profession. It respects all the Core Principles of the European Legal Profession set forth by the CCBE and almost all the relevant rules at a European and International level.

Only a call for a more strict and express defence – at a State level – of the basic guarantee of confidentiality (not only intended as a duty for lawyers but as a fundamental human right for clients) can be highlighted, even if it could have been provided for in the procedural codes.

Furthermore, it should be noted that current provisions regarding the Registers A and B of foreign lawyers do not comply with the Directive 98/5/EC.