

Dr. Danilo Türk
President of the Republic of Slovenia
Office of the President of the Republic
Erjavčeva 17, SI-1000
Ljubljana, Slovenia

Dear President,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE). The CCBE represents the bars and law societies of 31 member countries and 11 further associate and observer countries, and through them around 1 million European lawyers.

The CCBE is following with great concern recent developments in Slovenia regarding the organisation of the legal profession. As we understand, there is an intention to abolish mandatory membership in the Slovenian Bar Association and to transfer certain competencies of the Bar to state or state-influenced authorities.

In all CCBE member countries, independent Bars and Law Societies – besides other functions in the public interest and their function to stand up for justice and the rule of law – represent the lawyers' profession vis-à-vis the government and third parties; and in most of the EU member states membership to their respective Bar or Law Society is mandatory. An independent legal profession is the cornerstone of a free democratic society based on the rule of law – fundamental principles enshrined in the Preamble of the Charter of Fundamental Rights of the European Union. Self-regulation of the legal profession is the corollary to this independence and the collective independence secured by autonomous Bars and Law Societies in turn is the corollary to the necessary independence of individual lawyers required by a state based on the rule of law.

The CCBE would like to recall in this context, *inter alia*, the basic principles of the legal profession which are enshrined in international legal texts.

The United Nations Basic Principles on the Role of Lawyers, 1990 recognise the importance of an independent and self-regulated profession:

“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.” (Principle 24)

“Professional associations of lawyers shall cooperate with governments in order to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics”. (Principle 25)

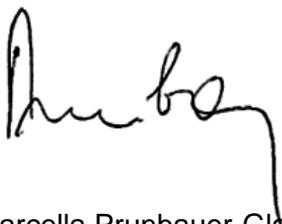
Mandatory membership is widely considered, and may indeed in my view be considered as European *acquis*, to be a pre-requisite of a self-regulated and properly independent Bar or

Law Society, essential to guarantee the quality of legal services and the independence of lawyers.

Such Bar membership goes together with an effective regulation of the profession and enforcement of disciplinary rules. An economic study on the legal services market in Denmark¹ found that abolishing mandatory membership would lead to a number of severe disadvantages. It could lead to decreasing quality and professionalism within the legal profession; the public interest aim to ensure high quality of the services of a lawyer could be undermined because lawyers could avoid sanctions by cancelling their Bar membership. This appears logical in view of the fact that the objective of deontological rules and a disciplinary system to which lawyers are subject is to safeguard the core values of the legal profession in the public interest, which directly contributes to the quality of the legal services rendered. In case of abolishing mandatory Bar membership in Slovenia, we understand that the current disciplinary system would need to be fully or partially replaced by another and probably state-prone disciplinary system, such that clients can complain about all lawyers regardless of whether they are members of the Bar or not. Implementing such a state-prone disciplinary system would not only encroach on the fundamental rule of law principle of necessary independence of the legal profession from the State, but it would probably also lead to higher costs without any guaranteed return in terms of higher efficiency or better enforcement. It should also be noted that currently mandatory bar membership is a means to ensure the professional indemnity insurance obligation of a lawyer, which obligation in turn operates in the consumer and public interest. A strong and independent self-regulated legal profession is equally an important factor contributing to economic growth.

The CCBE strongly believes that the abolition of mandatory Bar membership in Slovenia would have many serious negative impacts and be ultimately in contradiction to the European Commission's aims under the "justice for growth" initiative. The CCBE therefore urges the Slovenian authorities not to consider any further to abolish mandatory Bar membership and to stop from any initiatives from transferring certain competencies of the independent Bar to state or state-prone authorities.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Prunbauer-Glaser', with a long, sweeping underline that extends to the right.

Marcella Prunbauer-Glaser
CCBE President

¹ "The Legal profession: competition and liberalization", January 2006, Copenhagen Economics (the full text of the study you can find here: http://www.ccbe.org/fileadmin/user_upload/NTCdocument/The_legal_profession1_1195120689.pdf).