

LANDSCAPE OF THE EUROPEAN LEGAL PROFESSION Has Unity Been Lost?

Call for papers 2010

The 2010 topic of the Public and Private Justice Course and Conference in Dubrovnik is the development of the legal profession in Europe and its impact on the functioning of civil justice.

In the past, European and global legal culture nourished the picture of a single legal profession. Still, in most countries, prospective members of the legal profession have to undergo a similar type of legal education. At least, they all visit the same law schools and start their career with the same or similar diplomas.

Yet, in the past decades an increasing tendency towards divergence and separation has been witnessed. The process of regional and political integration and the growth of the global market has caused a significant number of the members of the legal profession to work more and more in an international environment (in particular corporate lawyers and attorneys engaged in commercial cases). At the same time, another part of the legal profession still adheres to conventional practices centered around national law and national institutions (solo practitioners, most of the judiciary etc.).

While international collaboration increases, increased specialization is also taking place, as well as increased competition among the members of particular sectors of the legal profession. Competition does not only take place among the members of the same sectors, but also among members of different sectors. For certain legal jobs there is a continuing battle for monopolies, exclusivity or at least dominance. The drafting of legal documents, for example, is an area where the aspirations of independent attorneys, corporate lawyers, notaries, law clerks and legal consultants often collide. The members of the “other” sectors of the profession are in this context often perceived as enemies, as intruders into the space which only the “true” type of lawyer can occupy.

The ability to exercise simultaneously several legal jobs or functions (e.g. to be a lawyer and a notary; to work as an academic lawyer and a legal practitioner), although maintained to a certain extent in some jurisdictions, has also been limited. In spite of attempts to retain some lay-elements in adjudication, it is becoming ever more rare to see anyone but professional career judges as decision-makers in the civil courts.

The trend towards divergence is also manifested by the introduction of additional requirements for access to particular sectors of the legal profession. Law school is often not sufficient any more. There are specialist professional schools, academies, professional and bar exams, internships and further formal and informal requirements that need to be fulfilled in order to become a judge, an attorney, a notary or a bailiff. As the various requirements are often different from each other, a young lawyer after (or even before) graduation has to make a definitive choice of career, because it is very difficult or even impossible to change one’s career path afterwards. In the past,

switching from commercial companies to law firms, from law firms to prosecutorial duties, from prosecutorial duties to judicial posts, and from judicial posts to legal academia occurred regularly. Today, it seems that side recruitment and interchangeable career paths which enable a lawyer to experience different legal and non-legal aspects of the legal profession have become a curiosity, at least in the majority of European jurisdictions.

One notable divide that separates various legal professionals concerns their economic position and work status. In the same way as justice can be divided between public and private justice, legal professionals can be divided in “public” and “private” ones. Private legal professionals are, generally, at work in a liberal environment and exercise their duties independently, although some of these lawyers may work as employees in the private sector (e.g. in-house counsel). All of them are under looser or stricter public control in respect of their adherence to legal or ethical standards. Public legal professionals (such as “magistrates”, i.e. judges and public prosecutors) generally work as employees of the state for a fixed salary and operate in an hierarchical environment; however, they also enjoy certain privileges and claim to perform their duties more or less independently.

There are also other divisions, e.g. the division between legal theory and legal practice. While historically law professors have played an extremely important role in the drafting and interpretation of legal rules and norms, their position is currently under attack from various sides, e.g. from the side of the professional services departments of governmental institutions or from the side of the “practicing” members of the various other sectors of the legal profession (lawyers, judges etc.). The opposition against members of legal academia may be motivated by the wish to take control of access to particular sectors of the legal profession (e.g. by organizing special mandatory post-graduate professional schools and exams), in order to maintain current privileges, or to influence the legal services market.

Speaking of the market of legal services, one of today’s hotly debated issues concerns monopolies, i.e. the level of exclusivity that a particular sector of the legal profession may claim on the legal services market. The issue of exclusivity and monopoly is also raised with respect to methods of professional recruitment, where different approaches are encountered, from the free unlimited access for all who fulfill the minimum requirements, to public or professional appointments subject to a *numerus clausus* in respect of the available posts. Different arguments are used to either criticize or justify such arrangements in the context of their usefulness, compatibility with the rules of a free legal services market or the impact on the quality of legal services and the level of legal protection offered to the citizens.

All of these developments have also occurred in the post-Socialist states of Central and South-Eastern Europe, but with certain peculiarities. The development of the legal profession was decisively affected by the ideology of the Communist government, which suppressed or abolished the private legal profession, and affected the way public legal professionals operated. After the 1990s, in a number of post-Socialist countries some private legal professionals such as lawyers and notaries were re-introduced, but the discontinuity in their development and their resurrection in a completely different historical context brought about new doubts and problems. Two decades later, in many of the post-Socialist countries the landscape

of the legal profession is still not well-balanced and fully developed. A representative example can be found in the post-Yugoslav states, where e.g. the profession of the private bailiff has still not been fully (re)established, with the resulting deficiencies in the enforcement of judgments and other enforceable documents.

All the above themes may be discussed in the papers that are to be presented at the 2010 Public and Private Justice Conference and Course in Dubrovnik. We would be grateful if you would be willing to participate in this Conference and Course and invite you to submit your paper proposal to the Organizing Course Directors before **February 1, 2010**. As in the past years, a book will be published based on the course contributions and discussions.

We would encourage you to choose a topic of your liking, provided that it is compatible with the theme outlined above. In order to facilitate your choice, we include a brief list of sample topics which we may be covered:

- Quo vadis?: What will the legal profession of 21st century look like?
- Landscape of the legal profession and quality of legal protection.
- Judges, attorneys, notaries, bailiffs and Rechtspfleger – core functions, common grounds, overlapping areas?
- Competition or collaboration?: the division of work among the different sectors of the legal profession.
- Pros and cons of cross-professional work – lawyers as judges, professors as lawyers ...
- Monopoly or free competition?: to which level should the legal profession be regulated, controlled and/or privileged?
- Separate careers or side-recruitment? – mobility among various branches of the legal profession.
- Theory vs. practice – the role of legal academia today.
- Emerging legal professionals? Arbitrators, Mediators, Consultants ...
- Restoring tradition in Eastern Europe: continuing history or starting anew?

We are looking forward to receiving your proposals!

Yours sincerely,

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