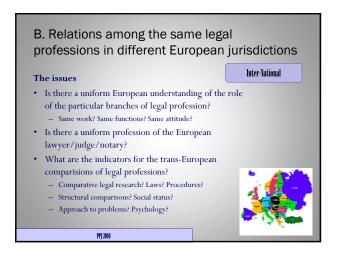
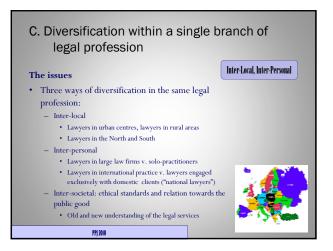


A. Relations among different branches of the legal profession – trans-European comparisons

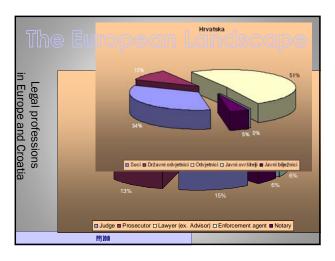
The issues

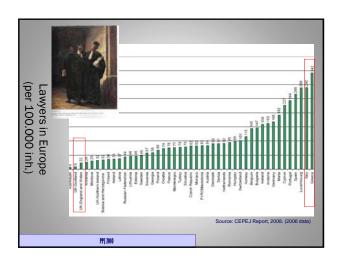
Inter-Professional

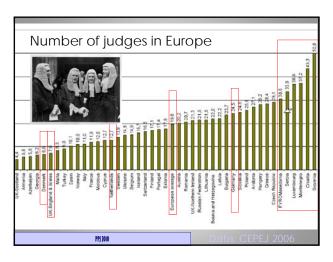


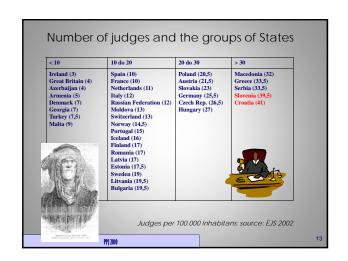


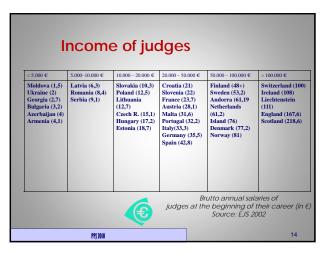


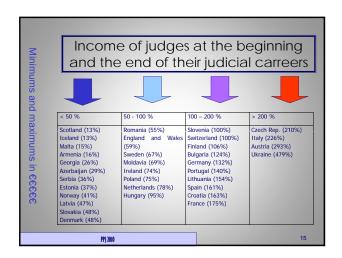


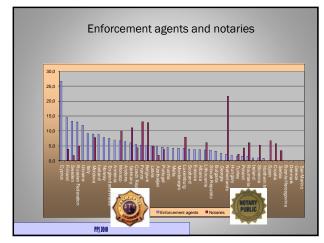












Volatility of the comparisons – dynamic change						
<u></u>	Year	Lawyers	%	Interns	%	
Number of lawyers trends 1992-2009	1992	1221	100	380	100	
er of 3 199	1994	1782	146	483	127	
lawy)2-2(1997	2100	172	550	145	
'ers:	2004	2493	204	965	254	
	2008	3427	280	1620	426	
Total # of lawyers and their interns registered in Croatia						
	PPJ 2010					

· Legal professions as a part of the public service for **Developments and dilemmas** enforcement of civil rights? - Old and new understanding of the role of legal professionals • Lawyers as problem-solvers or problem-makers? Oversized professions as the cause of inefficiency? • The Eastern reception of Western models: misplaced harmonization? - Independence as a shield from social responsibility? • Back to the future: compatibility of the IT-era with the refeudalization of the legal profession - Re-establishment of monopolies and professional privileges in the transition countries · Marginalization of the role of the universities - Professional schools: a fight over the control of access to profession: from a uniform to a diverse educational background Suppressing the legislative role of the legal academia: from professors as legislators to professionals as legislators?



JOHN P.WESTWOOD

THE INSTITUTE OF LEGAL EXECUTIVES
(ILEX)
UK
DIRECTOR OF INTERNATIONAL
PROGRAMMES

THE 'SEISMIC' EFFECT OF THE LEGAL SERVICES ACT 2007

THE LEGAL SERVICES ACT 2007

.....SEEKS TO LIBERALISE AND REGULATE THE MARKETS FOR LEGAL SERVICES IN THE UK, TO ENCOURAGE MORE COMPETITION AND PROVIDE A NEW ROUTE FOR CONSUMER COMPLAINTS.

NATURE AND SCOPE OF THE UK LEGAL SERVICES MARKET 2004

- In 2003 £19 Billion
- Exported £1.3 Billion
- Imports £403 million
- 97000 Solicitors (75000 in private practice)
- 3400 Solicitors working overseas
- 15000 Barristers
- · 22000 members of ilex
- 850 licensed conveyancers
- 850 Registered Trade Mark Attorneys/900 Public Notaries

PRE - 2007

- HISTORICAL PERSPECTIVE
 OFFICE OF FAIR TRADING
 COMPETITION LAW
 ATTITUDE OF THE PROFESSIONS
- EXISTING REGULATION ISSUES
 OVERLAP
 GAPS
 CONFLICTS OF INTEREST
- NEED FOR A MORE EFFECTIVE AND INDEPENDENT COMPLAINTS HANDLING ARRANGEMENTS

CONSUMERS AT THE CENTRE

- INCREASE PUBLIC TRUST AND CONFIDENCE
- ENSURE CONSUMER INTERESTS WERE REPRESENTED EFFECTIVELY
- ENSURE COMPETITION WAS NOT UNJUSTIFIABLY RESTRICTED
- ENSURE APPROPRIATE STANDARDS OF EDUCATION TRAINING AND CONDUCT WERE MAINTAINED

CONSUMERS AT THE CENTRE (CONT)

- IMPROVE REDRESS ARRANGEMENTS TO ENSURE THAT CONSUMERS WERE GIVEN QUICK AND FAIR REDRESS
- ENSURE THAT APPROPRIATE STANDARDS WERE MAINTAINED THROUGH EFFECTIVE REGULATION AND DISCIPLINARY ARRANGEMENTS
- ENSURE THAT ACCESS TO JUSTICE WAS PROVIDED AND IMPROVED
- ENSURE THAT THE INDEPENDENCE OF THE LEGAL PROFESSION FROM OUTSIDE INFLUENCES WAS MAINTAINED

CLEMENTI REVIEW

THE BRIEF, HOW TO:

- DEVELOP A MORE EFFECTIVE REGULATORY PROCEDURE REFORM COMPLAINTS PROCEDURES
- ENCOURAGE COMPETITION

ENGAGEMENT WITH STAKEHOLDERS

- CONSUMER ORGANISATIONS
- REGULATORY BODIES
- OTHER PROFESSIONAL BODIES
- OTHERS UNIVERSITIES/COLLEGES

THE LEGAL SERVICES ACT 2007

- THE LEGAL SERVICES BOARD
- LEGAL DISCIPLINARY PARTNERSHIPS
- ALTERNATIVE BUSINESS STRUCTURES

THE LEGAL SERVICES BOARD

OVERSEER/SUPERVISOR SAFEGUARDING THE INDEPENDENCE OF THE PROFESSION

- · ASSIST IN THE MAINTENANCE OF STANDARDS OF REGULATION, EDUCATION AND TRAINING
- PRACTISE GOOD CORPORATE GOVERNANCE
- PRODUCE AN ANNUAL REPORT
- ESTABLISH A CONSUMER PANEL

THE LEGAL SERVICES BOARD (CONT)

- · EIGHT REGULATORY OBJECTIVES
- FIVE PROFESSIONAL PRINCIPLES
- SIX RESERVED LEGAL ACTIVITIES

REGULATORY OBJECTIVES

- PROTECT/PROMOTE THE PUBLIC INTEREST
- SUPPORT THE CONSTITUTIONAL PRINCIPLE OF LAW
- IMPROVE ACCESS TO JUSTICE
- PROTECT AND PROMOTE THE INTERESTS OF CONSUMERS
- PROMOTE COMPETITION
- **ENCOURAGE A STRONG DIVERSE AND EFFECTIVE LEGAL** PROFESSION
- INCREASE PUBLIC UNDERSTANDING OF THE CITIZENS LEGAL RIGHTS AND DUTIES
- PROMOTE AND MAINTAIN ADHERENCE TO THE PROFESSIONAL PRINCIPLES
- ** SERVICES SUCH AS ARE PROVIDED BY AUTHORISED PERSONS
- ** AUTHORISED PERSONS ARE THOSE INVOLVED IN RESERVED LEGAL ACTIVITIES

PROFESSIONAL PRINCIPLES ARE:

That authorised persons should;

- · Act with independence and integrity
- Maintain proper standards of work
- · Act in the best interests of their clients
- Should comply with their duty to the court to act with independence in the interests of justice
- Ensure client confidentiality

OFFICE FOR LEGAL COMPLAINTS

- SINGLE GATEWAY FOR ALL COMPLAINTS AGAINST ALL LEGAL SERVICES
- DISCIPLINARY MATTERS REMAIN THE RESPONSIBILITY OF INDIVIDUAL APPROVED REGULATORS

PROFESSIONAL BODIES

REGULATION V REPRESENTATION

- SOLICITORS REGULATORY AUTHORITY (SRA)
- BAR STANDARDS COUNCIL
- ILEX PROFESSIONAL SERVICES

OPPORTUNITIES/CHALLENGES

LEGAL DISCIPLINARY PARTNERSHIPS (LDP'S)

SRA CAN AUTHORISE LDP'S

PRACTICES WHERE UP TO 25% OF PARTNERS OR EQUIVALENT MANAGERS ARE NON-LAWYERS WITHOUT ANY EXTERNAL OWNERSHIP.

ALTERNATIVE BUSINESS STRUCTURES (ABSs)

Will enable lawyers like solicitors, barristers and legal executives to share management and control of the firm with non lawyers such as accountants, estate agents etc in a new business entity

OPPORTUNITIES/THREATS

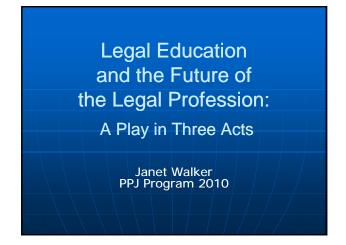
OPPORTUNITIES

- FINANCE EXTERNAL INVESTMENT
- FLEXIBILITY
- MERGERS
- TRAINING
- ABILITY TO REWARD GOOD NON-LEGAL STAFF WITH PARTNERSHIP/OWNERSHIP OPPORTUNITIES
- MORE CHOICES ONE STOP
- PRICE

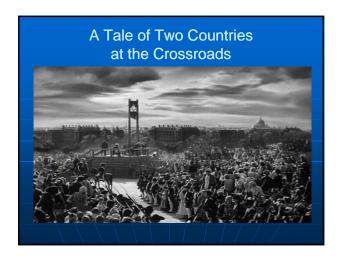
OPPORTUNITIES/THREATS

THREATS

- BREAK UP OF THE ENTITY PERCEPTION
- REGULATOR V REGULATOR
- COMPETITION THE END OF THE SMALL FIRM
- COMMODITISATION
- LAWYERS/LAW FIRMS THEMSELVES TESCO LAW













"disputes
had become
the lucrative
playthings
of rival teams
of lawyers"

Neil Andrews



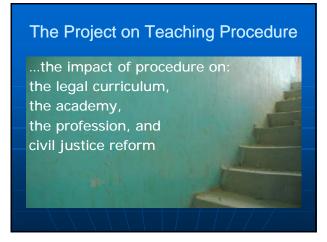












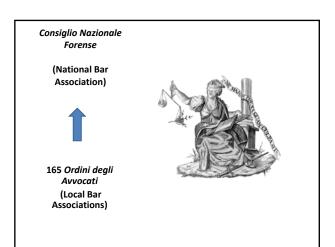


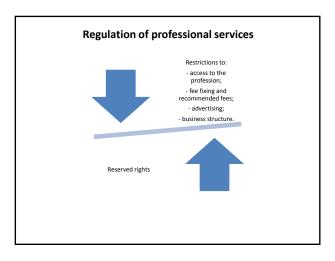




Elisabetta Silvestri Università di Pavia, Italy

Italy Lawyers: 230,000 •290 lawyers per 100,000 inhabitants •26.4 lawyers per each professional judge in office (European average ratio: 7 to 1)





The **European Framework**



- Concept of Undertaking: 'every entity engaged in economic activity, regardless of its legal status and the way in which it is financed': C 41/90, Höfner and Elser vs Macroton GmbH [1991]
- Concept of Economic Activity: any activity 'consisting of offering goods and services on a given market is an economic activity': C 35/96, Commission vs Italy [1998].
- For the purpose of competition law (art. 101, sec. For the purpose of competition law (art. 101, sec. 1 of the Treaty of Lisbon), A) members of the Bar are 'undertakings'; B) the Bar Association must be regarded as an 'association of undertakings'; C) regulations adopted by the Bar Association C) tegulations adopted by the Bal Association amount to 'decisions by associations of undertakings': C 309/99, J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV vs. Algemene Raad van de Nederlandse Orde van Advocaten [2002].

TREATY OF LISBON, TITLE VII, COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS

RULES ON COMPETITION

- RULES ON COMPETITION
 SECTION 1
 RULES APPLYING TO UNDERTAKINGS
 Article 101
 (formerly, Article 81 TEC)

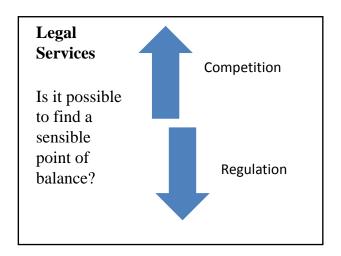
 1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;

- (b) limit or control production, markets, technical development, or investment;
 (c) share markets or sources of supply;
 (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
 2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
 3. [omissic]

The Italian Landscape



- 2006: Legge Bersani (a statute for liberalization in professional services). It repealed: A) mandatory fees and minimum fees; B) the prohibition against success fees; C) the prohibition against advertising; D) the prohibition against multi-services partnerships and companies.
- 2009: Report of the Italian antitrust authority (Autorità garante della concorrenza e del mercato – AGCM) on competition in professional services.
- 2010: A bill for the reform of the legal profession pending before the Parliament.





The Legal Profession in Italy: Regulation vs Competition?

Conclusion

GIUSEPPE FINNOCHIARO: TABLES FOR THE PRESENTATION

TABLE 1

New civil jurisdictional proceedings commenced before all the Italian Justices of the Peace. Brute numbers and, between brackets, the proportional increase/decrease of proceedings in comparison with previous year, divided on the nature of the proceedings.

Data collected in the web site <u>www.istat.it</u>						
	Ordinary	Special	Administrative	Injunctions		
Year	proceedings	proceedings	sanctions			
			oppositions			
2000	438.866	393.196	153.125	388.478		
2001	457.346 (+4,21%)	387.202 (-1,52%)	339.466 (+121,69)	372.057 (-4,22%)		
2002	451.058 (-1,37%)	373.663 (-3,49%)	358.152 (+5,50%)	362.988 (-2,43%)		
2003	525.572 (+16,51%)	424.638 (+13,64%)	350.500 (-2,13%)	404.670 (+11,48%)		
2004	583.166 (+10,95%)	463.788 (+9,21%)	415.836 (+18,64%)	433.944 (+7,23%)		
2005	465.465 (-20,18%)	387.701 (-16,40%)	639.807 (+53,86%)	378.560 (-12,76%)		
2006	457.693 (-1,66%)	372.953 (-3,80%)	756.422 (+18,22%)	360.844 (-4,67%)		
2007	441.990 (-3,43%)	366.049 (-1,85%)	859.742 (+13,65%)	345.172 (-4,34%)		

TABLE 2

New civil jurisdictional proceedings commenced before all the Italian Tribunals. Brute numbers, divided on the nature of the proceedings. Data collected in the web site www.istat.it Ordinary procedings Proceedings Proceedings concerning Bankruptcies Injunctions Year concerning tenancy of First instance labour law housing not housing Appeal buildings buildings 7.941 2000 482.610 162.006 74.072 28.644 53.782 319.061 2001 475.553 7.066 71.492 29.609 49.984 335.988 158.696 2002 460.523 8.185 150.948 73.083 30.159 45.911 343.963 2003 482.893 12.062 162.759 79.092 31.127 47.358 382.870 2004 504.075 19.900 166.961 87.574 39.054 52.422 422,912 2005 508.668 24.160 160.569 84.570 40.565 52.169 400.781 2006 473.876 38.089 135.527 82.376 38.920 39.755 403.539 2007 486.360 48.189 145.046 85.407 40.235 23.570 444.321

TABLE 3

New proceedings concerning separation and divorce commenced before Italian Tribunals. Brute numbers, and, between brackets, the proportional increase/decrease of proceedings in comparison with previous year, divided on the nature of the proceedings.

Data collected in the web site www.istat.it

	Separations		Div	orces	Modifications of the
Year	by mutual consent	contentious	By mutual consent	Contentious divorces	separation/divorce
		separations			conditions
2000	63.267	36.373	30.438	18.013	8.021
2001	68.836	36.136	32.502	18.827	8.216
2002	69.258	34.482	33.997	17.505	8.857
2003	69.810	37.184	34.949	17.988	9.636
2004	69.032 (-1,11%)	35.619 (-4,20%)	37.217 (+6,48%)	19.179 (+6,20%)	10.517 (+9,14%)
2005	66.110 (-4,23%)	34.979 (-1,79%)	38.169 (+2,55%)	19.654 (+2,47%)	10.456 (-0,58%)
2006	62.980 (-4,73%)	31.781 (-9,14%)	37.548 (-1,62%)	19.753 (+0,50%)	11.167 (+6,79%)
2007	67.409 (+7,03%)	36.491 (+14,82%)	40.243 (+7,17%)	21.068 (+6,65%)	12.280 (+9,96%)

TABLE 4

Average income in 2002, divided by Regions and genders, expressed in Euros. Between brackets the multiples of a man income in comparison with a woman in the same Region.

Data received by Italian Lawyers Social Security Entity

Region		Average incomes	
	women	Men	total
Valle d'Aosta	€ 39.473	€ 58.712	€ 52.121
		(1,48)	
Piemonte	€ 30.120	€ 73.011	€ 55.396
Lombardia	€ 35.726	€ 102.456	€ 73.631
		(2,86)	
Liguria	€ 23.726	€ 69.867	€ 52.964
		(2,94)	
Veneto	€ 27.214	€ 66.881	€ 51.149
Emilia Romagna	€ 27.524	€ 63.071	€ 47.540
Friuli-Venezia Giulia	€ 29.383	€ 72.404	€ 56.546
Trentino	€ 34.372	€ 83.006	€ 63.992
Alto Adige	€ 40.114	€ 85.025	€ 71.671
Trentino-Alto Adige	€ 36.905	€ 84.106	€ 67.902
Toscana	€ 22.547	€ 57.433	€ 43.299
Lazio	€ 26.676	€ 74.585	€ 57.529
		(2,79)	
Umbria	€ 19.508	€ 48.153	€ 36.237
Marche	€ 19.215	€ 49.808	€ 38.014
Molise	€ 14.725	€ 32.457	€ 26.068
Campania	€ 17.588	€ 40.287	€ 33.967
Puglia	€ 15.099	€ 35.026	€ 28.925
		(2,31)	
Basilicata	€ 12.554	€ 31.562	€ 25.030
Calabria	€ 14.477	€ 27.045	€ 22.705
		(1,86)	
Sicilia	€ 16.753	€ 34.866	€ 29.926
		(2,08)	
Sardegna	€ 18.209	€ 38.802	€ 30.968
Abruzzo	€ 16.424	€ 37.200	€ 29.869
total	€ 24.847	€ 59.457	€ 46.860
		(2,39)	

TABLE 5

Average income in 2006, divided by Regions and genders, expressed in Euros. Between brackets the multiples of a man income in comparison with a woman in the same Region.

Data received by Italian Lawyers Social Security Entity

Region		Average incomes	
	women	men	total
Valle d'Aosta	€ 36.462	€ 61.181	€ 51.330
		(1,67)	
Piemonte	€ 29.971	€ 76.198	€ 55.963
Lombardia	€ 37.948	€ 109.400	€ 76.760
		(2,88)	
Liguria	€ 24.944	€ 76.837	€ 56.355
		(3,08)	
Veneto	€ 28.470	€ 69.826	€ 51.837
Emilia Romagna	€ 27.826	€ 65.932	€ 48.391
Friuli-Venezia Giulia	€ 30.821	€ 70.613	€ 54.874
Trentino	€ 34.805	€ 79.348	€ 60.924
Alto Adige	€ 37.226	€ 85.439	€ 70.516
Trentino-Alto Adige	€ 35.840	€ 82.640	€ 65.716
Toscana	€ 24.053	€ 59.560	€ 44.217
Lazio	€ 28.731	€ 79.881	€ 60.435
		(2,78)	
Umbria	€ 22.332	€ 52.695	€ 39.242
Marche	€ 21.127	€ 50.771	€ 38.617
Molise	€ 16.461	€ 30.104	€ 25.077
Campania	€ 19.566	€ 45.707	€ 37.575
Puglia	€ 18.037	€ 37.709	€ 31.250
		(2,09)	
Basilicata	€ 13.881	€ 33.604	€ 26.272
Calabria	€ 15.403	€ 28.661	€ 23.786
		(1,86)	
Sicilia	€ 17.768	€ 37.608	€ 31.647
		(2,11)	
Sardegna	€ 18.177	€ 40.741	€ 31.419
Abruzzo	€ 18.606	€ 44.078	€ 34.450
total	€ 26.464	€ 63.849	€ 49.213
		(2,41)	

TABLE 6

Average income in 2008, divided by Regions and genders, expressed in Euros. Between brackets the multiples of a man income in comparison with a woman in the same Region.

Data received by Italian Lawyers Social Security Entity

Region		Average incomes	
	women	men	total
Valle d'Aosta	€ 30.779	€ 60.996	€ 47.957
		(1,98)	
Piemonte	€ 30.751	€ 76.324	€ 55.593
Lombardia	€ 39.809	€ 108.502	€ 75.951
		(2,72)	
Liguria	€ 27.254	€ 77.201	€ 56.272
		(2,83)	
Veneto	€ 30.000	€ 70.921	€ 52.104
Emilia Romagna	€ 29.200	€ 69.742	€ 50.230
Friuli-Venezia Giulia	€ 31.634	€ 75.215	€ 56.363
Trentino	€ 38.572	€ 81.604	€ 63.144
Alto Adige	€ 43.591	€ 100.745	€ 82.213
Trentino-Alto Adige	€ 40.745	€ 92.027	€ 72.727
Toscana	€ 25.440	€ 59.474	€ 43.849
Lazio	€ 31.553	€ 85.261	€ 63.740
		(2,70)	
Umbria	€ 21.780	€ 50.969	€ 37.769
Marche	€ 21.594	€ 51.523	€ 38.385
Molise	€ 17.742	€ 35.776	€ 28.405
Campania	€ 21.729	€ 49.343	€ 40.053
Puglia	€ 19.538	€ 39.865	€ 32.801
		(2,04)	
Basilicata	€ 15.876	€ 37.875	€ 29.517
Calabria	€ 16.830	€ 30.672	€ 25.300
		(1,82)	
Sicilia	€ 19.254	€ 39.117	€ 32.515
		(2,03)	
Sardegna	€ 20.779	€ 42.215	€ 32.732
Abruzzo	€ 20.186	€ 41.988	€ 33.196
total	€ 28.177	€ 66.025	€ 50.351
		(2,34)	

TABLE 7

INDLL				
Ranges of incomes (2002 in	n Euros) of all Italian lawyers			
Data received by Italian Lav	wyers Social Security Entity			
Ranges of incomes	Total income of the range	Avarage income	Number of lawyers of the	%
, and the second			range	
< zero	-4.829.766	-7.010	689	0,57%
Zero	-	-	16.124	13,28%
1 - 6.780	75.193.113	3.361	22.369	18,43%
6.780 - 11.300	116.048.491	8.931	12.994	10,70%
11.300 - 37.370	868.741.395	21.590	40.238	33,15%
37.370 - 74.800	823.836.726	52.247	15.768	12,99%
74.800 - 150.000	835.779.067	103.132	8.104	6,68%
150.000 - 250.000	524.056.651	189.807	2.761	2,27%
250.000 - 500.000	531.509.522	341.807	1.555	1,28%
> 500.000	825.655.337	1.039.868	794	0,65%
total	4.600.820.301	37.899	121.396	100%

TABLE 8

IADEL 0				
	n Euros) of all Italian lawyers			
Data received by Italian Lav	wyers Social Security Entity			
Ranges of incomes	Total income of the range	Avarage income	Number of lawyers of the	%
		·	range	
Not declared income	0	0	12.156	8,67%
< zero	-4.282.965	-4.438	965	0,75%
Zero	-	-	16.216	12,67%
1 - 6.960	79.119.773	3.512	22.531	17,60%
6.960 - 11.600	129.198.385	9.168	14.092	11,01%
11.600 - 38.300	991.816.887	22.106	44.867	35,05%
37.300 - 76.800	878.220.086	53.511	16.412	12,82%
76.800 - 150.000	834.128.223	104.318	7.996	6,25%
150.000 - 250.000	513.369.544	189.017	2.716	2,12%
250.000 - 500.000	502.108.023	336.534	1.492	1,17%
> 500.000	848.882.276	1.198.986	708	0,55%
total	4.776.843.197	37.321	140.151	100%

TABLE 9

IADLL /				
	Euros) of all Italian lawyers			
Data received by Italian Lav	yers Social Security Entity			
Ranges of incomes	Total income of the range	Avarage income	Number of lawyers of the	%
			range	
Not declared income	0	0	14.082	9,20%
< zero	-3.368.176	-3.444	978	0,70%
Zero	-	-	17.015	12,24%
1 – 7.140,00	92.206.408	3.637	25.349	18,24%
7.140,00 - 11.900,00	147.954.610	9.382	15.770	11,35%
11.900,00 - 39.200,00	1.066.300.829	22.651	47.075	33,87%
39.200,00 - 78.650,00	989.841.353	54.808	18.060	12,99%
78.650,00 - 150.000,00	908.101.677	106.223	8.549	6,15%
150.000,00 - 250.000,00	628.221.842	189.681	3.312	2,38%
250.000,00 - 500.000,00	662.177.999	343.632	1.927	1,39%
> 500.000,00	943.036.729	998.980	944	0,68%
total	5.437.841.448	39.127	153.061	100%

TABLE 10

Ranges of incomes (2005 in	Euros) of all Italian lawyers			
Data received by Italian Law				
Ranges of incomes	Total income of the range	Avarage income	Number of lawyers of the	%
Ü	· ·	Ü	range	
Non declared income	0	0	24.244	14,25%
< zero	-4.168.059	-3.820	1.091	0,75%
Zero	-	-	19.001	13,02%
1 – 7.320,00	97.103.820	3.699	26.253	17,99%
7.320,00 - 12.200,00	161.043.657	9.651	16.686	11,44%
12.200,00 - 40.200,00	1.129.701.295	23.239	48.613	33,32%
40.200,00 - 80.600,00	1.055.242.228	56.115	18.805	12,89%
80.600,00 - 150.000,00	958.131.827	107.318	8.928	6,12%
150.000,00 - 250.000,00	675.267.604	189.257	3.568	2,45%
250.000,00 - 500.000,00	662.714.216	341.958	1.938	1,33%
> 500.000,00	996.310.683	980.621	1.016	0,70%
total	5.735.515.329	39.312	170.143	100%

TABLE 11

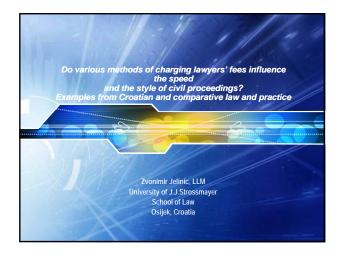
IADLL II				
Ranges of incomes (2006 in	Euros) of all Italian lawyers			
Data received by Italian Law	yers Social Security Entity			
Ranges of incomes	Total income of the range	Avarage income	Number of lawyers of the	%
			range	
Not declared income	0	0	23.147	12,22%
< zero	-7.874.728	-5.719	1.377	0,83%
zero	-	-	24.601	14,80%
1 - 7.470,000	114.497.904	3.780	30.292	18,22%
7.470,00 - 12.450,00	186.154.239	9.867	18.866	11,35%
12.450,00 - 41.000,00	1.276.011.795	23.633	53.993	32,47%
41.000,00 - 82.200,00	1.164.409.730	57.222	20.349	12,24%
82.200,00 - 150.000,00	1.037.314.837	108.688	9.544	5,74%
150.000,00 - 250.000,00	730.834.290	189.778	3.851	2,32%
250.000,00 - 500.000,00	780.875.140	345.214	2.262	1,36%
> 500.000,00	1.197.467.411	1.061.585	1.128	0,68%
totale	6.487.565.346	39.020	189.410	100%

TABLE 12

TADLL IZ				
	Euros) of all Italian lawyers			
Data received by Italian Lav	vyers Social Security Entity			
Ranges of incomes	Total income of the range	Avarage income	Number of lawyers of the	%
	_	-	range	
Not declared income	0	0	22.342	11,57%
< zero	-4.510.636	-3.728	1.210	0,71%
Zero	-	-	24.053	14,09%
1 - 7.590,00	110.985.665	3.921	28.306	16,58%
7.590,00 - 12.650,00	194.853.853	10.086	19.320	11,32%
12.650,00 - 41.700,00	1.392.095.097	24.174	57.587	33,73%
41.700,00 - 83.600,00	1.301.870.224	58.382	22.299	13,06%
83.600,00 - 150.000,00	1.086.761.328	109.553	9.920	5,81%
150.000,00 - 250.000,00	801.684.291	189.703	4.226	2,48%
250.000,00 - 500.000,00	849.743.657	342.225	2.483	1,45%
> 500.000,00	1.365.251.110	1.039.004	1.314	0,77%
total	7.103.245.225	41.608	193.060	100%

TABLE 13

Ranges of incomes (2008 in Euros) of all Italian lawyers						
Data received by Italian Lawyers Social Security Entity						
Ranges of incomes	Total income of the range	Avarage income	Number of lawyers of the	%		
			range			
Not declared income	0	0	28.281	13,94%		
< zero	-7.793.128	-3.926	1.985	1,14%		
Zero	-	-	22.192	12,71%		
1 – 8.000,00	122.946.291	4.044	30.403	17,41%		
8.000,00 - 10.750,00	104.949.458	9.360	11.213	6,42%		
10.750,00 - 42.550,00	1.584.479.447	22.934	69.090	39,56%		
42.550,00 - 85.250,00	1.304.868.732	59.529	21.920	12,55%		
85.250,00 - 150.000,00	1.069.521.821	111.038	9.632	5,52%		
150.000,00 - 250.000,00	814.330.573	189.732	4.292	2,46%		
250.000,00 - 500.000,00	872.727.459	339.055	2.574	1,47%		
> 500.000,00	1.353.370.728	1.019.104	1.328	0,76%		
total	7.227.194.509	41.386	202.910	100%		

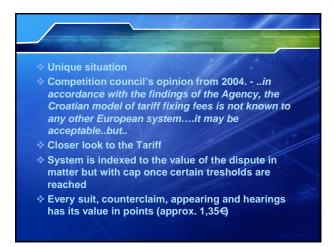








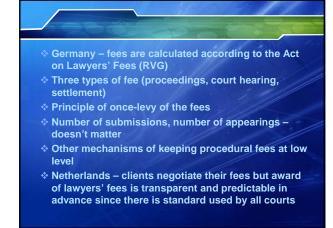
- ★ Tariff for Lawyers' fees and cost compesation (November, 12., 2009.)
 ★ New Tariff is just somewhat different then previous one (from 2004.)
 ★ For certain procedures (tresspasing, tenancy disputes, divorce, labour relations, establishment or denial of matrimony and paternity, custody over children as well some other) lump sum for entire 1st instance procedure is fixed
 ★ Same with drawing legal remedies and execution proceeding
 ★ It was estimated that the latter change will result in benefits for clients and judiciary.
- In all other matters lawyers are still entitled to calculate each service they render
 Sum of all of the services presents final cost of representation
 CCP In deciding which costs are to be paid to the party, the court shall take into consideration only costs that were necessary for the conduct of the case. The court shall decide which costs were necessary and on the level of these costs, taking careful consideration of all the circumstances.
 Method of calculation of costs?
 CCP If there is a prescribed tariff for attorney's fees and other costs, these costs shall be calculated according to this tariff!

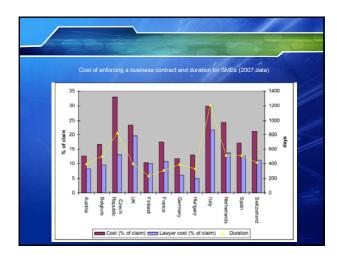


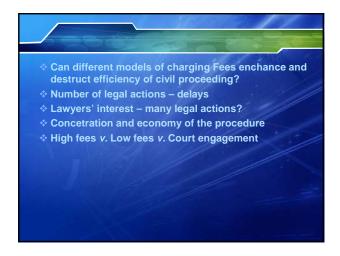
_	
	Tariff is flexible - certain items on the Tariff can be increased (100%) or decreased (50%) depending on the cirmustances
	Like elsewhere, remuneration per Hour is possible
	Special ways Contracting Remuneration are foreseen (valid only if contracted in writing)
	TNo. 38 (lump sum), 39 (other agreements).
	Freedom of contract is recognized so lawyer and client can agree on the fees in writing
	In property legal matters contingency fees are permitted also (max. 30% of the succeeded)
•	Freedom of contract is widely recognized
	These agreements do not oblige the court in determining costs to the successuful party
•	New price list with old practices

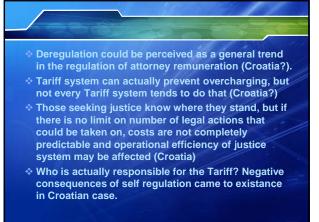








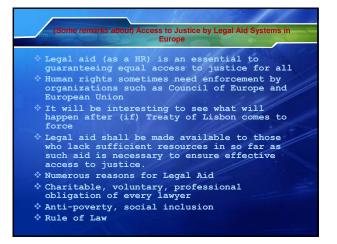
















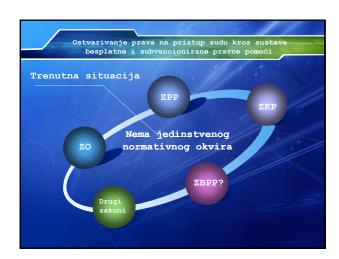


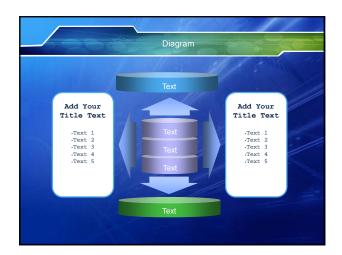


Hot Tip

To a slide I incorporate my logo
to a slide that will apply to all the other slides?

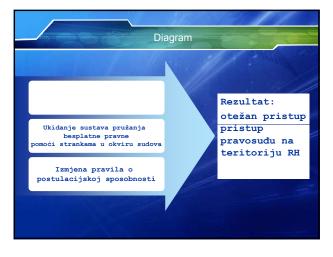
On the [View] menu, point to [Master], and then click [Slide Master] or [Notes Master]. Change images to the one you like, then it will apply to all the other slides.

















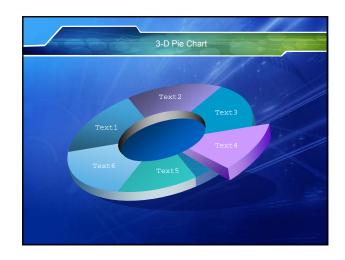








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The changing role of a trial judge in the civil procedure

Nina Betetto

External factors that influence the changing role of the judiciary

- Changing character of the activities of the legislative and executive branches of power
 - ever more entangled and intertwined (duas politica)
 - less codification, rather more policy than law oriented
 - law the instrument of choice to achieve policy goals
 - more state intervention

External factors that influence the changing role of the judiciary

- Consequences in the judiciary
 - it becomes more than before a corrective power
 - it adopts an increased role in law-making
 - judicial activism

External factors that influence the changing role of the judiciary

- Information society
- information technology
- role of the media
- changing attitude as regards transparency, accountability, freedom and accessibility of information

Internal factors that influence the changing role of the judiciary

- Changing demands on the judiciary in a modern society
 - legal demands (e.g. ECHR case law)
 - democratic demands (e.g. openness, accountability, transparency)
 - service related demands (e.g. efficiency, quality)
- Internationalization of judiciary (e.g. IAJ, CCJE)

Accountability and judiciary

- Traditional "hard accountability"
- judiciary held accountable by institutions like the appeal system, professional requirements and standards, recruitment, appointment, promotion, disciplinary
- "Soft (social) accountability"
- openness, dialogue, sensitivity to the values and needs of the community

The function of a judge in the civil procedure

 Ude: The function of a judge in a civil procedure is to establish facts, find and apply the appropriate norms of substantive law, make a conclusion whether the factual situation corresponds to the abstract factual situation contained in the norm of the substantive law and to determine a sanction foreseen by the law.

The function of a judge in the civil procedure

- Deciding the case
- Law-making
- Ensuring fundamental procedural guarantees
- Case management
- Duties regarding a consensual resolution of a dispute
- Control function of a court

Deciding the case

- The influence of information technology
 - the increased role of a case law
 - a case law is gaining a similar position as it has in precedential systems
- Legal demands
 - the influence of precedents, e.g. of the ECHR and Constitutional Court case law
- Corrective function of appeal courts (final decision upon the claim)

Ensuring fundamental procedural guarantees

- Legal demands
 - the influence of precedents (e.g. of the ECHR and Constitutional Court case law) on the understanding of basic principles of civil procedure, e.g. orality, right to be heard, right to a public trial...

Case management

- "The judge must ask questions and shall in other appropriate manner see that all ultimate facts be stated during the hearing and that all necessary explanations be given."
- The judge is bound by the factual assertions and evidence, offered by the parties, but has a right and a duty to stimulate the parties to amend and clarify the assertions of facts.

The role of an active case management has been increased

- The amendment CPA-A (2002)
 - settlement conference
- The amendment CPA-D (2008)
- the court has a duty to give the plaintiff an opportunity to remedy the action by supplementing the factual assertions
- case management also in the preparatory stage of litigation: a judge can pose written questions and demand written clarifications
- case management in the apellate proceedings

A changing role of a judge managing the case

- Law the instrument of choice to achieve policy goals
- A judge adopts an increased role in lawmaking
- Changing demands on the judiciary: when deciding the case a judge has a duty to "serve" parties (service related demand)

Duties of a judge regarding a consensual resolution of a dispute

- A judge has a duty throughout the whole course of proceedings – to be active at the encouraging of settlements
- A judge may refer parties to ADR

Duties of a judge regarding a consensual resolution of a dispute

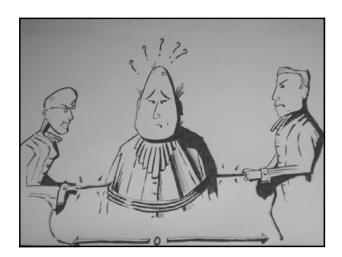
- Changing demands on the judiciary: a judge has to be sensitive to the needs of the parties
- "Soft (social) accountability"

How far can a judge go when he tries to stimulate the parties to reach a settlement?

- Method of work based on active case management
- A judge may comment on legal issues and drive attention to legal grounds
- Can a judge use mediation techniques?





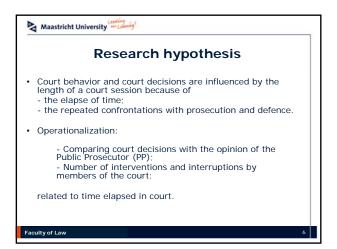




Research theme

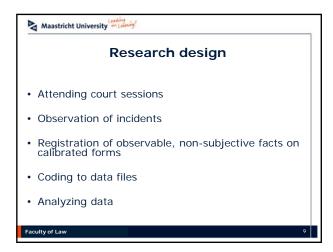
Consistency of judicial behavior and judicial decisions in court room

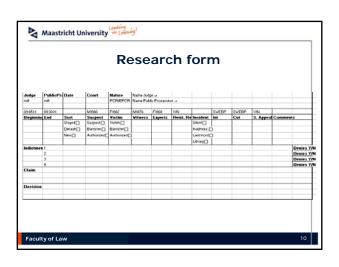
Judge in a sandwich position between prosecution and defence: vulnerable to repeated strain injuries?

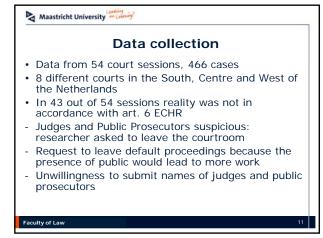


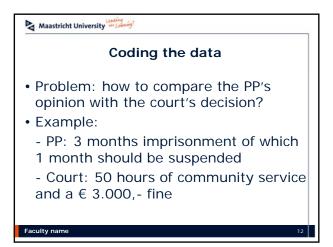


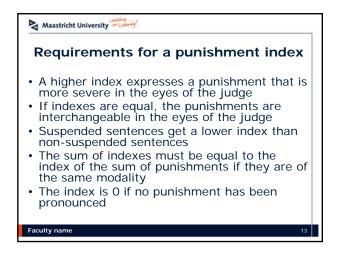




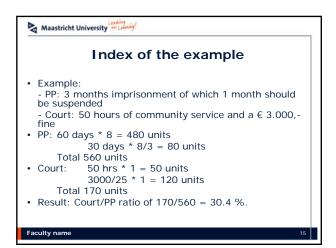


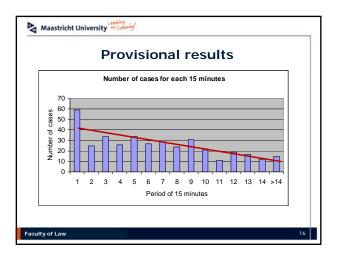


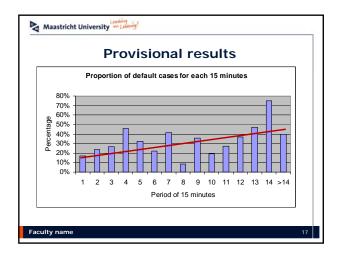


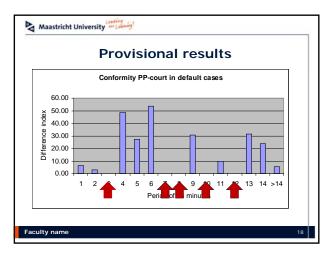


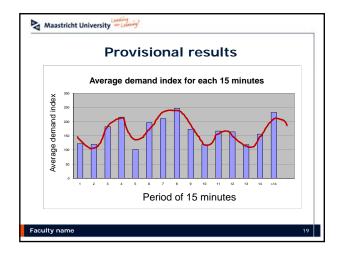
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Punishment ⇔ Modality∜	Imprisonment	Fine	Community service	Distraint (estimated value)/ disqualification from driving (€ 400/month)
Non- suspended	8 units/day	1 unit /€ 25	1 unit/h	1 unit/€ 25
Suspended (1/3)	2.66 units/ day	0.33 units/ € 25	0.33 units/h	0.33 units/ € 25

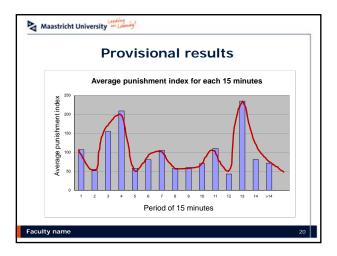


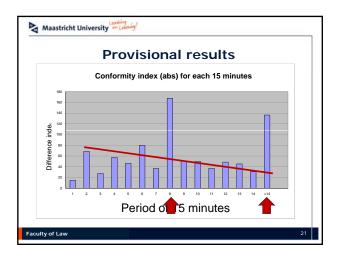


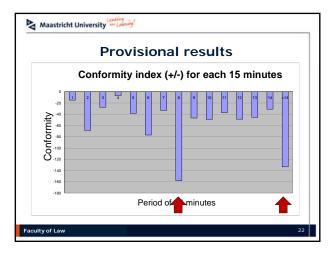


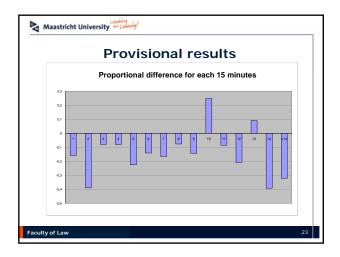


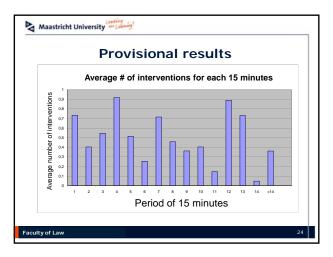


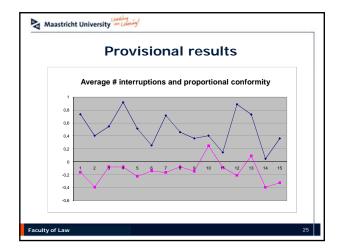


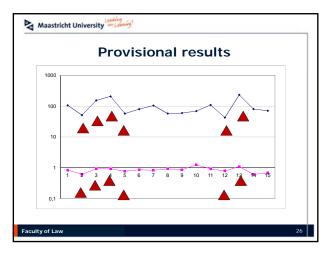














RECEPTION OF RECHTSPFLEGER IN **EASTERN EUROPE:** PROSPECTS AND **DIFFICULTIES**

1. RECHTSPFLEGER AS PART OF GERMAN LAW TRADITION

- In the early 20th century judges in Germany were transferred a number of functions by the Law on Judicature (Gerichtsverfassungsgesetz)- as a result they could not meet essential citizens' requirements (resolve disputes), which threatened their reputation and citizens' confidence
- In Germany, 1906 9000 judges; in England 500
 1906, Preußische Allgemeine Verfügung-clerks of the court drafted decisions in simple non-contentious and civil procedure.
- The 1909 ZPO Novelle- establishment of procedure costs and order to pay were transferred to the authority of the clerk of the court for independent performance the first transfer of judicial functions to a non-judicial

2. GERMAN RECHTSPFLEGER

- Law on Rechtspfleger (1957; 1969)
- Rechtspfleger is a higher judicial officer performing the functions of non-contentious jurisdiction (§ 1/1 dRPfIG)
- Rechtspfeleger is independent and is obliged to act in accordance with the law
- Rechtspfleger is not obliged to follow judges' instructions; performing the transferred functions
- Rechtspfleger's position between officer and judge
- Education indicates tendency of extanded professional education (instead of 1 or 2 years extended to 3) and one- or two-year practice as well as passing the Rechtspfleger exam

- Scope of Rechtspfleger Duties
- 1. Matters completely transferred to Rechtspfleger (association issues, land register procedure, register keeping, distraint on immovables)
- 2. Transferred matters in which judge keeps the authority of a part of functions (custody, inheritance procedure, companies register and bankruptcy proceedings)
- 3. Matters individually transferred to Rechtspfleger (establishing costs of the procedure, taking statements, legal aid)

3. AUSTRIAN RECHTSPFLEGER

- in 1926 the matters of distraint were transferred to the bodies of court office for the first time
- Law on Rechtspfleger (1962, 1985); passing of the law and amending the Constitutions ran concurrently
- Art. 87 a of the Constitution « Under the Federal law specially educated public officers other than judges may be entrusted with particular determined matters.»
- Rechtspfleger is bound to judge's instructions
- 85% of all cases before Austrian courts solved by Rechtspfleger

4. RECEPTION OF RECHTSPFLEGER IN EASTERN

- EUROPE
 The institute of Rechtspfleger is an export success of German judicature. It was introduced in Estonia, Poland, the Czech Republic, Slovakia, Hungary, Romania, Bosnia and Herzegovina and Croatia
- Rechtspflegers in Eastern Europe differ according to general requirements for conducting affairs of Rechtspfleger, their level of education and independence, range of duties and their number in reference to the number of judges
- General ratio of the number of judges and Rechtspfleger in Austria and Germany amounts to 2: 1

718 • 1674 Austria B and H 113 9846 202 • 1924 Croatia • Czech Republic 1637 • 2995 83 0 239 Estonia 11 821 20 138 Germany 464 • 2 838 Hungary 1 417 • 9 853 Poland Slovakia 813 0 1 337

						100
	ESTONIA	POLAND	BOSNIA and HERZEGOVINA	CROATIA	ROMANIA	
INTRO- DUCTION	1996	1998	2001	2004		-
REQUIRE- MENTS	Faculty of Law, Law practice, Rpfl. exam	Faculty of Law, Law practice, Rpfl. exam	Faculty of Law, Law practice, Rpfl. exam	Secondary education and 10 years of work experience; associate degree and 5 years of work experience + exam	National school for Greffier	
COMPET- ENCES	Land register, court registry, bankruptcy, distraint,	Land register, court registry, inheritance proceedings, distraint,	Land register	Land register	Court administration	7
PROJECT		9		7	Transfer of judges' function	7

5. RECHTSPFLEGER IN CROATIA

- Introduced by the Law on Amendments of the 2004 Land Register Code along the lines of the Austrian Rechtspfleger model
- Requirements for authorized land registrars:
- 1. secondary education of humanities and 10 years of work experience in land registry; a two-year degree and 5 years of work experience
- 2. land registrar's examination
- 3. motion of the president judge
- An authorised land registrar deals with land registry issues

- Review
- 1. insufficient qualifications
- 2. judge-instruction-dependent
- 3. legal remedy against decisions quasiremonstrative (the appeal is decided by judge and not by land registrar)
- in practice a number of problems caused by land registrars' insufficient qualifications; does not have the features of the Austrian Rechtspfleger model

- In Croatia judicial advisors are also entrusted with some
- Judicial advisors' qualifications include:
- 1. degree in law
- 2. bar examination
- Competences: Civil procedure (50,000; 500,000 kuna), non-contentious procedure; land register and distraint procedures
- They conduct the procedure, establish facts, present evidence, draft decisions
- Drafted decisions are signed by the judge
- Notaries public issue decisions on inheritance and distraint on the grounds of valid documents

6. RECHTSPFLEGER **HARMONISATION**

- E.U.R. (European Union of Rechtspfleger) founded in 1967, comprises 16 European countries; purpose-harmonisation of existing Rechtspfleger/Greffier models in Europe
 In 2008 the Green Paper for a European Rechtspfleger with an aim of harmonising European models according to the German and Austrian Rechtspfleger models

 Note for the Company of th

- Main features:
 Education 3 ± 2 (Bachelor of Law or equivalent; relatively wide scope of non-contentious competences; provision on real independence and independent from judge instructions
 Purpose- to guarantee better access to justice for EU-citizens, to achieve higher public confidence of the EU citizens and the efficiency of justice

7. A NEW LEGAL **PROFESSION**

- Events on wider European scene- France showing interest in introducing the model of Rechtspfleger emphasizing the need for amendments to French Constitution.
- In Germany transfer of existing functions of Rechtspfleger to notaries and introduction of public distraining officers of the court
- Curiosity- the Bill of the Law on Transfer of non-contentious cases to notaries and Bill of the Law on Distraining Officers of the Court with adequate bills of amendment of the German Constitution along the lines of Austrian provision on Rechtspfleger
- Explanation: transfer of serious prerogatives of state powers may endanger basic constitutional rights; the purpose is to avoid questionable constitutionality
- in Austria the main aim is to carry out the Rechtspfleger education outside the Ministry of Justice at externally organised college and university degree studies of law and administration (3+2). This would lower the costs, the choice would be better, more professional and personal.
- In Eastern Europe possible expansion of competences of those Rechtspfleger models that proved successful implementation
- Adequate level of education is achieved by study of law; education mainly externally organised.

8. CONCLUSION

- 1. Rechtspfleger as originally traditional institute of German legal tradition has been demonstrating a high level of effectiveness
- 2. Rechtspfleger makes passing decisions easier for judges and improves effectiveness of administration of law.
- 3. The choice between German and Austrian Rechtspfleger models is the choice between an exclusively statutory and a statutory and constitutional system i.e. the choice between real independence and Rechtspfleger's dependence on judges' instructions
- 4. European Rechtspfleger model should overcome differences between Rechtspfleger/Greffier, ensure uniform level of education and a very wide scope of competences of non-contentious jurisdiction.

- 5. Rechtspfleger has been introduced in some Eastern countries mainly by pattern of German Rechtspfleger.
- Advantage of Rechtspfleger in Eastern Europe is an adequate professional education carried out mostly externally. Primary competences comprise land register and registry matters to be extended gradually to distraint, bankruptcy, legal aid and alike.

 Creatia differs from other East European and the control of the c
- Croatia differs from other East European countries in its professional education selection of land registrars.
 Possible implementation of Rechtspfleger model in Croatia should begin with appropriate professional education at faculties of law according to corresponding programmes. Rechtspfleger would pro futuro take functions of court advisers but not decisions to disputes.

LEGAL PROFESSIONS ROMANIA Sebastian Spinei, Senior lecturer, PhD Sibiu Law Faculty



Socialist period

- no independent/liberal professions

- part of the State Justice System

- lawyers:
- Collective Bureaux of Legal Assistance
- Justice Minister:
- general command over profession
- obligatory orders, instructions
- reorganised 1995

- notaries, bailiffs - Justice Ministry employees
- reorganised 1995, 2000

Present .

Lawyers - Activities :

- assisting, representing any person or corporate entity before any person or entity

- legal advice, legal document drafting

- mediation activity

- preserving, managing assets

- legal (judicial) aid services, etc.

Admission:

- no exam for graduates (1995-2000)

- no exam for 10 year career in other legal profession & PhD

- non-uniform exam procedures

- national exam for everybody (2008)

(Government ordinance)

- back before 2008

- Constitutional Court 2010: ordinance - unconstitutional

- Government bill (proposed law) - in process

- exam for everybody





- EU, EEA lawyers:

- may permanently practice in Romania as a foreign lawyer (no activity restriction; registration formalities required)

- may practice as Romanian Bar Association member (exam or 3 years work experience)

- may occasionally practice profession

max. 7 years restriction on free movement of lawyers (reciprocity principle)



Romania - Baillifs, notaries

Successful and desired professions

Criticism:

- Closed professions - not transparent enough or not trustworthy enough admission procedures
- Romanian Competition (Antitrust) Council Report (Oct.2009):

- fact: notary fee amount in Romania - amongst highest in EU, related to average income
- proposals:

- remove restrictions regarding number of profession members
- remove minimum fee, reduce amounts

Romania - Baillifs, notaries

Romanian Notaries Association (press release, Nov. 2009):

- nothing is wrong
- nothing has to be done

Positive developments:

Bailiffs - better educational background,
professional training

- 2000 - first bailiffs in office not required law
degree
- mandatory afterwards for admission
- mandatory training courses

Prosecutors - position in the system

- preeminent role in Socialist period

- State representative in Courts

- <u>Civil cases</u> - Attorney (Prosecutor) General:

- right of supervision over the activity of the Courts

- right to control any file

- could order the stay of execution of a judgment he would appeal

- <u>Criminal Cases</u>: prosecutor issues perquisition and arrest warrant

Today:

- step by step, back to traditional balanced position in proceedings

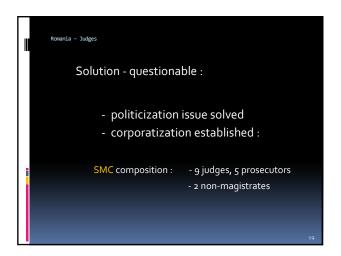
- still searching for identity: independent magistrate or executive agent?

Judges statute regulations - key for reforming justice

Independence:

- accomplishment - Superior Magistracy
Council (SMC)

- SMC took up from Justice Ministry (2003) all
prerogatives concerning magistrates career and legal
responsibility (disciplinary Court for magistrates)





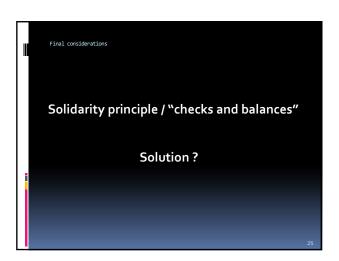
SMC today:
- rather inert institution
- most visible actions - "protecting profession's independence"
- any criticism - rejected as pressure and attack on independence
- lesser preoccupation for reforming magistracy (eliminating inadequately prepared and corruption susceptible magistrates)

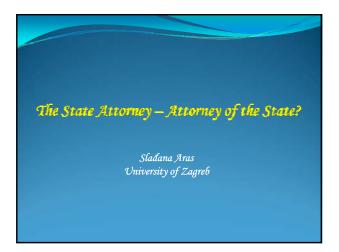
Recruiting personnel policy
Accomplishment - hard admission exam for
National Magistracy Institute (2 years):
relatively well trained graduates (theoretical level)

Down-side: not enough life and professional experience?

Ideas (lawyers):
- introducing same admission methodology for all professions
- National Magistracy Institute standards followed

Only magistracy and Bar Association exams requires all main Law disciplines (Criminal, Civil, Procedures)





Public Attorney/General Attorney/Government Lawyer?

- "javni pravobranitelj" "public defender"
- ⇔ ombudsman: a person who acs on behalf of public good (protection of human rights etc.) – introduced in RC in 1990s
- established in former Yugoslavia by federal and republic laws in 1952
- General Attorneys Office ("javno pravobraniteljstvo")
- "bodies of the federation, republics, provinces and administrative territorial units (the socio—economic communities) for legal protection of property rights and interests, rights and interests of other socialistic legal persons designated by law"

Organisation of GA's office

- every body of local government ("socio-political community") had its own organization of general attorney's offices
 - · "general attorney of the municipality"
 - "general attorney of the county/city etc."
- military civil attorney's offices was established at the federal level
- no hierarchy no subordination or superiority
- general (public) attorney → general (public) attorney's office
 - organisation: one general attorney and his deputies
 - professional associates

Principal obligations of the general attorney

- representation before courts and other governmental bodies
- providing legal opinions in connection with the conclusion of contracts relating to property matters
- keeping registers and providing legal assistance to economic organizations and institutions (= state and state agencies),
- acting as counsel in cases where other lawyers were representing the state and state entities in property disputes with foreign natural and legal persons

Military civil attorney (lawyer)

 authorized by law to represent the federation in property matters arising from the State Secretariat for National Defense, operating agencies and institutions of the Yugoslav People's Army before national courts and government agencies and institutions

Federal general attorney

 authorized by law to represent the State before foreign courts, agencies and institutions in property matters

GA's power to represent the State

- two bases for representation of socialist state entities (socio-political communities):
 - (1) automatic authority (mandatory representation)
 - $ex \, lege$ in case of property rights and interests of relevant state entities
- (2) by agreement (contracts concluded with e.g. state-owned companies ("organisations of united labor")
- territorial competence for representation:
 - each government attorney represented the state and state agencies on his territory

Public Prosecutor

- state body exercising criminal prosecution and other rights and obligations as defined by law
- acting in civil litigation:
 - as a party sui generis
 - as an intervenor
 - as the body protecting legality in proceedings ("request for protection of legality")
- also: military prosecutor
 - · criminal prosecution within the jurisdiction of military courts

The changes in the 1990s (Croatian development)

- the public attorney's office became the state attorney's office ("državno pravobraniteljstvo")
- authoriteis to represent were limited to the protection of property of the State and representation of the State in civil and administrative proceedings
 - ⇔ local government representation
- 2001: the (civil) State Attorney's Office was integrated into the (criminal) State Attorney's (=prosecutor's) Office which was previously limited to criminal prosecution
 - Staatsanwalt

Croatia and Europe – Has Unity Been Lost?

- Attorney's Office of the Republic of Croatia
 - autonomous and independent office in the judiciary
 - a merger of the functions of criminal prosecution, and the power to protect the financial interests and the property of the Stat:
 - also authorized to launch legal remedies in public interest (protection of the Constitution and the legal order)
- Italy:

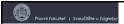
L'avvocatura dello Stato (State Attorney's Office)

Procuratore della Republica (Public Prosecutor)

• Germany:

Staatsanwalt (State Attorney)







Public and Private Justice 2010 Landscape of the European Legal Profession: Has Unity Been Lost?

The role of legal professions in bypassing the law: the example of *fiducia*

Tomislav Karlović Department for Roman Law, Faculty of Law Zagreb

Overview

- 1. Fiducia cum creditore in Roman Law
- 2. Sicherungsübereignung in Germany
- a) substantive law praeter or contra legem?
- b) interplay of legal professions
- 3. Fiduciary transfer of Ownership in Croatian Law of Enforcement
- a) reasons for introduction
- b) legislative changes underlying theoretical differences and the attitude of legal professions

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2

Fiducia cum creditore

- Elements: formal transfer of ownership on the most important objects of patrimony (res mancipi); duty to return – strictly obligatory nature; forfeiture on default
- Possession transferred; possible return in detentio by lease
- Legal profession: one group of people (patricians-)senatorial class) controls and occupies all legal posts - interpretatio
- Problem: (temporary) transfer of ownership (only accessible solution) – best protection for creditors

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Sicherungsübereignung

- Initial problems:
- a) changing legal order Das Faustpfandprinzip (Allgemeines Deutsches Handelsgesetzbuch 1861/1871)
- b) Need for extra credit period of economical growth
- Solution:
 - ${\it Sale-for-repurchase} \ with \ constitutum \ possessorium$
 - later Sicherungsübereignung

PUBLIC AND PRIVATE JUSTICE,

Sicherungsübereignung

Legal science (permissive – justification)

At first against – fraus legis

Audiciary (in doubt – inclined to allow)

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Fiduciary transfer of Ownership in Croatian Law of Enforcement • Stage I – introduction into legal order Legal science (comparative background) Legislation 1996 PUBLIC AND PRIVATE JUSTICE, 7

Stage II – conflict of two ideas • Model A) unconditional transfer of ownership - Enforcement Act 1996 • Model B) conditional transfer of ownership – Real Property Act 1996 (in force 1997) – ignored by judiciary; change of Enforcement Act in 2003 • results: uncertainty; creditors not interested and return in 2005 to primary form • Not accepted in 1997 – 2003 –

