

HOW BAR ASSOCIATIONS CAN PROMOTE THE RULE OF LAW

The Croatian Bar Association as a national bar association was founded in 1929 within the Kingdom of Yugoslavia. Until then there were regional and town bar associations some of which had a tradition spanning several centuries. The Bar Association was founded under dramatic circumstances. The Serbian king Aleksandar Kara•or•evi• dissolved the Parliament and established an octroyed constitution, with the explanation that he wished direct contact with the people and did not wish the Parliament to come between him and the people. At the inaugural assembly of the Croatian Bar Association, five lawyers headed by Dr. Ivo Politeo protested against the octroyed constitution of the Serbian dynasty Kara•or•evi• as it entailed the abolition of democracy in the Kingdom of Yugoslavia. The police arrested those five lawyers at the assembly itself. While in prison, Dr. Ivo Politeo learned that the assembly of lawyers had elected him as the first President of the Croatian Bar Association. This shows that, since its very beginning, the Croatian Bar Association has been engaged in the promotion of the rule of law.

The only period when the Croatian Bar Association was inactive was during the Nazi occupation of Croatia in the Second World War. Unlike the other communist regimes, where legal profession was abolished, in the communist Yugoslavia the legal profession and the Croatian Bar Association were restored in 1948. The Bar Association kept its independence and was a refuge for politically unacceptable legal

professionals who could not work in the then judicature. Membership in the Croatian Bar Association is obligatory for all lawyers and only by entry into the register of the Croatian Bar Association can one become a lawyer.

The policy of the Croatian Bar Association is to protect its members and to represent and defend their clients freely and without fear, thus contributing to the promotion of the rule of law. Croatian lawyers, as individuals, directly protect the each specific law in the Republic of Croatia and some of them, according to their affinities, are active members of non-governmental organisations such as the Croatian Helsinki Committee.

At the beginning of the 90's, in the midst of the war and aggression brought upon Croatia by the Yugoslav Army, a purge in the Croatian judicature was carried out. Together with the Serbian paramilitary forces, the Yugoslav Army attacked Croatia under the influence of the Serbian nationalists. In this emotional period of great tension, where people perished daily in attacks by the Yugoslav Army and paramilitary formations composed of Serbs from Croatia, many judges and state attorneys of Serbian nationality had to abandon their positions as a result of their nationality. At the time, there were also attempts from certain officials in the government and judicature to make the process of registration with the Croatian Bar Association stricter. This was done in the form of formal and informal recommendations, namely to apply the clause on lack of dignity more widely as a requirement for

entry into the register of the Croatian Bar Association. The Management Board of the Bar Association never gave in to such pressures and all applicants who fulfilled the formal requirements were registered with the Croatian Bar Association regardless of their nationality. As a result, the majority of judges and state attorneys of Serbian nationality found refuge in the Croatian Bar Association and the Bar Association protected them and enabled them to practice law freely. Some of them are now distinguished defence lawyers active in a number of very important processes before the Croatian courts and the Hague Tribunal.

It is of great importance to the Croatian Bar Association, as the membership is obligatory, not to fall under anyone's influence. As its members belong to various political parties and are of different nationalities or have different political and religious views, it is the duty of the Bar Association to enable each member to freely represent citizens in all matters without fear. The free, unrestrained and independent everyday work of lawyers is the most effective contribution to the realisation and promotion of the rule of law.

The topic, which at present is of importance to the Croatian Bar Association, is the subject of the endangerment of lawyer confidentiality. The adoption of international conventions on money laundering prevention, and the directive of the European Union requesting lawyers to report their clients when they suspect them of money laundering, is of crucial importance to the lawyers' profession.

The trust between the client and the lawyer is the basis of every legal representation. Lawyer confidentiality is a principle which developed from the need for the protection of the clients' interests and not for the protection of lawyers. The impinging of regulations upon the principle of lawyer confidentiality represents the impinging upon the very essence of the profession of a lawyer, and consequently represents the impinging upon clients' rights and their right to defence. The violation of the clients' right to defence violates in a wider sense the rule of law. In order to discuss this issue, it is important to distinguish between legal representation by lawyers and activities of lawyers as entrepreneurs, for example activities when a lawyer is not a lawyer but a participant in a business venture. It is evident that a lawyer's duty is the defence of clients who have committed the offence of money laundering, and that everything the client confides to his defence lawyer in such a relationship has to be protected by lawyer confidentiality. What does not represent a lawyer's duty, however, is when the lawyer sets up companies and manages bank accounts in his own name and on behalf of the client. This does not represent a lawyer's activity but a business relationship, and the lawyer's confidentiality does not apply to this relationship. In this case the lawyer acting in such a manner is no longer a lawyer but an entrepreneur who has to assume the risk and bear the consequences of his actions. If such an activity includes the assistance in money laundering activities, then he is an accomplice in committing an offence. Every protection or the

attempt to protect such a relationship by lawyer confidentiality directly causes damage to the lawyers' profession. The purpose of lawyer confidentiality is not the assistance in committing offences but the protection of the client who is in turn provided with a fair and just proceeding. This results in the lawyer defending the client and not the committed offence. Once we make a clear distinction between a lawyer's duty and a business relationship, all issues regarding the lawyer's confidentiality and money laundering cease to exist.

From now on, the activities of all Bar Associations wishing to protect the free performance of lawyer's activities will have to be directed to the clear differentiation of this issue. To conclude, no free performance of lawyer's activities is possible without the protection of lawyer confidentiality. Without the free practicing of lawyers it is impossible to realise our common goal, which is a society based upon the rule of law.