

## **Enhancing the Rule of Law by Strengthening the Legal Profession: Balancing the Scales of Lady Justice**

*By*

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### Introduction

Since the fall of the Iron Curtain, European institutions have supported the countries of South Eastern and in Eastern Europe (SEEE) on their road to democracy. In that light, they have invested a large amount in rule of law geared activities aimed at judges, public prosecutors, the police and officials of various Ministries. In the view of the Council of Bars and Law Societies of Europe (CCBE)<sup>42</sup>, one professional group with an essential role in facilitating the rule of law in society does not get the p attention it deserves: lawyers. Without well trained and independent lawyers, the legal system, and therefore the rule of law cannot function properly. It is in that context that the CCBE's recently launched 'European Rule of Law Projects' pleads for further action by the European institutions in order to support the empowerment of independent self-regulating organisations of lawyers – i.e. Bars - in SEEE.

### Why lawyers?

Professional organisations of lawyers lay down the ethical codes which lawyers must follow, the regulations of their qualification, the provision of their continuing training. They discipline lawyers, as well as protect their independence, and their professional integrity. Together with the judiciary - and, in criminal procedures, public prosecutors - lawyers are part of the administration of justice. They advise or represent the interests of citizens, and they defend them in criminal proceedings when much is at stake. By bringing certain provisions of national or international law to the attention of a judge, lawyers contribute to the correct application of the law by the judiciary, as a counterbalance to the public prosecutor's charges. Lawyers are, in short, responsible for

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<sup>42</sup> The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of the European Union and the European Economic Area - and through them, more than 700,000 European lawyers. In addition, it has six Observer Members from South Eastern and Eastern Europe.

a substantive share of one of the two scales of Lady Justice. Well informed, independent lawyers with integrity are essential to realising the rule of law in society.

Bearing in mind the heritage of communism in the countries of SEEE, the oft-heard argument that lawyers are rich enough to provide for their own training is not applicable, and is even beside the point here. It is assistance from outside that is wanted and needed in the transition period. In this context, it may not come as a big surprise that the Russian Federal Chamber of Lawyers has developed the concept of a ‘Single Legal and Rule of Law Space of the EU and the Russian Federation’ and that it has approached the CCBE to support them in their work towards the realisation of it.

#### European institutions and the rule of law in SEEE

Besides the American Bar Association’s Central and East European Law Initiative (ABA CEELI), the European Commission (EC) and the Council of Europe (CoE) are the most significant players in the rule of law field in Europe. In addition, the EC finances and runs a vast number rule of law geared activities, aimed at both the state administration - judiciary, public prosecution, police and various Ministries - and civil society organisations. The activities are run by a variety of Directorates General (DG): DG Justice, Freedom and Security, DG Enlargement and EuropeAid in conjunction with DG External Relations, DG Competition as well as DG Taxation and Customs Union; each DG has different programmes. In addition to thematic instruments to finance activities, the EC also has instruments with a geographic scope.

The risk of this rather scattered approach to the rule of law is that it will impede the co-ordination and cohesiveness of activities. In order to ensure effectiveness and efficiency, both are needed, whereas co-ordination between the many DGs – comparable to Ministries on the national level – is an enormous task. In addition, the accessibility of information for outsiders on rule of law activities suffers, which can lead to overlap or duplication of activities by others, where activities need to be complementary and co-ordinated. By using thematic grouping or by channelling the activities through a clearing house, clarity for all parties involved would be enhanced, which would, in turn, contribute to efficiency in the rule of law field in general.

The CoE has also conducted a wide range of rule of law activities in Eastern Europe, either at the request of beneficiary governments, or through joint programmes with the

EC. Due to its intergovernmental structure, many CoE activities are focused on the judiciary, while fewer activities are aimed at lawyers and Bars - as governments do not always request assistance in that field.

In 2002, the CoE Committee of Ministers adopted a Resolution establishing the European Commission for the Efficiency of Justice (CEPEJ), which is “...aimed at (a) improving the efficiency and the functioning of the justice system of member states, with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system and (b) to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice”<sup>43</sup>. In that context, the Ministers have formulated recommendations for judges and public prosecutors as well as for lawyers<sup>44</sup>. As a consequence, two consultative councils have been created: one for judges and one for public prosecutors. The creation of a third consultative council for lawyers could contribute to the aims set forward in the Resolution and Recommendations. This has not yet been undertaken.

There seems to be a tradition at policy level of the European institutions not to involve lawyers in rule of law assistance programmes that are aimed either at the public sector, or civil society organisations. The training of lawyers appears to be seen as an issue of the profession, and not as being in the interest of society. Recently, some changes have been noticed: the EC has announced a few legal aid programmes in Eastern Europe, and some time ago, a programme for civil society organisations was published which applies to the strengthening of the professional organisations of lawyers. The CCBE welcomes these developments, and is of the opinion that more such initiatives are needed.

### Conclusion and recommendations

Both the EC and the CoE have invested considerably in rule of law geared activities since the fall of the Iron Curtain. The EC runs its rule of law activities from numerous DGs, which endangers coherence of activities and the efficiency of resources. Various programmes exist for public institutions and – to a lesser extent – for civil society

<sup>43</sup> Council of Europe Committee of Ministers Resolution Res (2002)12 establishing the European Commission for the efficiency of justice (CEPEJ),

<sup>44</sup> Recommendation (2000)21 on the Freedom of the exercise profession of lawyer

organisations. Most of the programmes focus on the judiciary and public prosecutors, and much less is done towards strengthening Bars and training lawyers. Bearing in mind the public interest of well trained, independent lawyers who demonstrate integrity, more programmes should be aimed at lawyers, especially Bars which are responsible for the regulation of the legal profession. This aspect is essential in achieving properly functioning legal systems, and thus the realisation of the *Etat de droit*, (*this is especially the case given the heritage of communism in the target area*).

Representing the Bars and Law Societies of Europe, the CCBE has launched its 'European Rule of Law Projects' with the aim of creating a financed programme for strengthening Bars and the legal profession in the emerging democracies on the eastern borders of the EU. In this role, the CCBE would be happy to take its responsibility in the issues mentioned above, and assist the European institutions in their work towards realising the rule of law in SEE.