

Should we “modernise” the lawyers’ profession and the Bars?

This will be the theme of our congress which will take place in AIX EN PROVENCE on 21st and 22nd May 2010.

For the last 20 years, the lawyers’ profession in Europe has been undergoing constant changes. In this brief period, it has changed more than in the two preceding millennia. At any rate, we still refuse to be treated as mere “service providers” with clients who are mere “law consumers”, like anyone else who consumes services or products. This would mean forgetting what is special about our profession.

We cannot allow ourselves to be absorbed until we disappear into the market even if, at the same time, we cannot forget that we are entrepreneurs and that our moral independence must be complimented by economic independence.

Nothing could be worse for the profession than to advocate doing nothing. Certainly, change may prove difficult. It is not always the same thing as progress or enlightenment. But we should take the contemporary world into account by recalling the fundamental principles on which we cannot compromise:

- A strict professional code of ethics,
- Exceptional skills based on initial and continuing training,
- Concern to sustain the Rule of Law and Justice while promoting the Rights of Man, citizen’s rights and access for all to the Justice system.

For these reasons, we have things to point out.

The stunning success of the lawyers’ profession in Europe over the last twenty years; the number of lawyers is increasing fast in every single country. There is a real need for them and citizens expect their services.

On the other hand, the conditions for entering the profession and for training vary greatly.

The economic basis of our profession depends on its skills. Should continuing training be compulsory in every country? Should the level of initial training be further improved, when there is competition from different professions; from other law related professions or others? Should lawyers be persuaded to specialise and should this specialisation be made compulsory?

On the other hand, should our professional code of ethics be considered sacrosanct? Should it apply to all lawyers in the same way, regardless of their area of work, or should it make allowances for their chosen area of activity or even the extent of their clients’ knowledge (“sophisticated clients”)? Should

this code of ethics develop for the benefit of Law consumers, for the major law firms or other firms and for the requirements of the market? Should we draw up National and European ethical Codes, or even a world-wide Charter for professional ethics? Finally, how can we deal with the self regulating nature of the profession and preserve this essential right?

To modernise the profession requires the use of new technology which is adapted to our needs. The European Commission has launched the major "e-justice" project. Should lawyers become part of it and participate in its development? The organisation of video links on a national and European scale is envisaged for the procedures. Should we accept this method of communication? What guarantees should we ask for; and what security? Will this apply to all the procedures?

Surely the Bar has an obligation to install equipment permitting uncomplicated, simple access to these new technologies and to envisage training programmes to reduce possible differing levels of access to information (video links available for the Bar, data banks about legislation and jurisprudence, internet training, ...) ?

Virtual procedures are becoming widespread. The European Commission has instigated new discussions about access to these procedures all over the European Union. Should lawyers participate? How can our relationship with Justice be improved through these new technologies?

These technological changes will lead to a new division of labour for lawyers, from the expert who provides only a "made-to-measure" service, to the general practitioner who facilitates access to law while working with ordinary people, also including the Law engineer who can guide teams of jurists to resolve a complex problem.

New technologies will also lead to debate about work structures. Group practices for lawyers are helping to modernise the profession. Should the organisation of lawyers' work continue to change? How can the permanence of partnerships be guaranteed, and how can financing be assured for their development? The European Bars Federation defined its policy during its Bruges Conference in 2009, opposing the entry of outside capital in lawyers partnerships and law firms. At the same time, the Federation hoped that under legislations which had tolerated it, this capital would form a minority and would not interfere with authority, which must remain in the hands of lawyers.

What about the "alternatives business structures" which are going to be set up in a few months? Should lawyers' work structures be open to other Law professionals (solicitors or others), statistics professionals (chartered accountants or auditors...) or other business or skilled professions...? Should co-operation be encouraged between the different professions? Should it be restricted to a single dossier, or become structural through either capital investment or working in common? Our legislation differs but we can seek the best solution for lawyers through our discussions.

Should we develop new tools for procedural matters as well as advice for help in developing the lawyers' work? What about collaborative law, alternative means of conflict resolution or the idea of an instrument countersigned by the lawyers to increase its power of proof?

Modernisation should also make the certification of partnerships more secure. Steps have been taken either by lawyers' work structures or by the Bars to attain higher quality through ISO certification. What were the results? Should we encourage partnerships and the Bars to continue with this?

All these questions directly concern the Bars and our work.

We will have to choose because we cannot deal with all these points in a single day. Large scale discussion must start now and the Bars and the organisations should take part. The European Bars Federation has decided to open a forum on its WEB site. Each president, each chairman of the Bar, each member of the council of a professional body and each lawyer should be able to participate in this large scale discussion which concerns the future of our profession, suggesting analyses, new themes and lines of thought. The European Bars Federation commissions should also participate in setting up this congress and preparing adequate resolutions.

We want this congress to be your congress and to deal with subjects and themes which you have chosen.

This should provide all of us with the chance to work out a new collective vision of our professional activity for years to come.

We have to change and keep debating to remain what we are; that is to say lawyers!

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