

**FEDERATION DES BARREAUX D'EUROPE**

**EUROPEAN BARS FEDERATION**

**VERBAND EUROPÄISCHER RECHTSANWALTSKAMMERN**

**FEDERACION DE LOS COLEGIOS DE ABOGADOS DE EUROPA**

**FEDERAZIONE DEGLI ORDINI FORENSI D'EUROPA**



**General Congress**

**Aix-en-Provence – Friday 21 May 2010**

**MAREK MACIEJ WIEWIÓRSKI, POLAND,**

**WROCLAW REGIONAL CHAMBER OF LEGAL ADVISERS,**

**“REFORM OF THE PROFESSION AND BARS FROM THE POLISH PERSPECTIVE”**

Mr. President,

Dear Colleagues representing various Bars - members of the European Bars Federation (FBE),

Advocates practising the profession in various European countries!

I would like to begin by thanking you for the opportunity to speak at this Congress and participate in a discussion on the modernisation of the legal profession and the Bars. I strongly believe that discussions in international forums – such as FBE – and coordination at the international level of steps taken by the national Bars are necessary for us to have a real impact on the shape of the advocate's profession – both in our individual countries and in international environment, including relations with EU bodies.

Convening this Congress, President Michel Benichou emphasised that in the last 20 years the legal professions in Europe had been undergoing enormous changes. These changes affected nearly all the aspects of our profession.

As a representative of Polish legal advisers, I would like to share with you our experiences in the field of the reform of the legal profession. I am going to present it from the perspective of a lawyer practising the profession in the country that 20 years ago underwent a huge changes – a collapse of a regime, political and economic transformation. Most of you practise your profession in countries with democratic tradition that has been well-established for many generations, in countries where the free market has been an obvious (and necessary) solution for a very long time. Your societies are built around values that we usually call a democratic state of law. The values I have mentioned here, their existence (or lack of them), fundamentally affect the manner (or even the possibility) of practising the

profession by lawyers. Imagine, then, how significant were the changes Polish lawyers had to experience when, after 1989, the essentials of our economy, political system and values around which the society develops altered. In a very short time, the Polish closed, socialist economy and one-party communist regime had to give way to a system most of you have known for all your lives. A ‘shock therapy’ applied to our economy and Country brought about the need to modernise the legal profession in Poland and adapt it to the new reality. These changes occurred gradually and, as a consequence, in recent years the manner of practising the legal profession in Poland has not been significantly different from the way our colleagues in Western European countries work (even if numerous differences exist in each of the Countries represented in FBE). Therefore, I would dare to present a conclusion that in previous years the modernisation of the legal profession in Poland was a natural process connected with a larger-scale system transformation taking place in our country, and the Polish lawyers demonstrated the ability to change their habits, to adapt to the new conditions. The process I am talking about here was a result of both changes in law and natural changes in the behaviour of lawyers as entrepreneurs operating in the free and dynamic market. What is important is that, in the majority of cases, the changes in laws regulating the practice of the legal profession in Poland arose from consultations with the lawyers themselves and took into account (at least partly) their position on the subject. I would not like to claim that those processes were free of any tensions arising simply from natural differences between various parts of the Polish legal circles, but lawyers never felt they were mere objects of changes introduced by the legislators. We felt that, as lawyers, we generated those changes and were part of a wider-scale process of transformation and modernisation of our country.

Recently, in consequence of political changes in our country, a number of changing government coalitions as well as – and I won’t hesitate to use that term – populist arguments that have come to the fore, the natural process of modernisation of the legal profession in Poland has been replaced with an excessive interference of the State authorities, which in the view of many could result in depriving the Bars and their members of the rights and protection guaranteed by the Polish Constitution and being the nature of the legal profession.

At this point I owe you an important clarification: in Poland there are two regulated legal professions authorised to represent the Clients in the courts of all instances. These professions are an advocate and a legal adviser. I am proud to practise the profession of legal adviser. The reasons for a parallel existence of two professions of such a similar nature are historical and the limits of this speech do not allow me to present them in detail. I am speaking here about the modernisation of the legal profession in Poland from the perspective of our Bar.

One of the key problems for our Bar in recent years in Poland has been the State's attempt to strongly interfere with the manner in which our profession is practised. Successive Polish governments have declared the need to introduce urgent changes in laws regarding legal advisers and advocates and have made partial amendments to the laws in force. In recent years, some of those changes have been appealed against to the Polish Constitutional Court, which declared them to be contrary to the Polish Constitution. Further complaints relating to the amended laws are pending before the Court. So far, no comprehensive draft of changes has been prepared that would regulate all the aspects of the practice of the profession by legal advisers and advocates, partly due to the fact that in the past 30 months we have had 3 different ministers of justice responsible for preparing these changes.

The key changes proposed by successive Ministers in recent years have included:

- a) Providing wider access to the profession also for persons who have not completed relevant legal traineeship (preparation to practise the profession). The Bar believes that the proper way to enter the profession is to complete the legal traineeship adequately preparing a person to perform activities under the supervision of experienced members of the Bar;
- b) Depriving the Bar of the right to organise the qualification process for the legal traineeship and to organise final examinations. This results in an illogical situation where the Bar is responsible for organising the legal traineeship but not for the entrance examination before the traineeship or for the

final examination. Recently, the Bar suggested complete resignation from the legal traineeship entrance examination as its current form has led to a distortion of the idea of the entire procedure;

c) Depriving the Bar of the right to exercise disciplinary jurisdiction or its (considerable) limitation. The Bar is in favour of a reform of the disciplinary jurisdiction and improvement of the proceedings, however, in our view, disciplinary proceedings during which members of the Bar are judged for whether or not they comply with the Code of Ethics established by the Bar cannot be conducted without a significant participation of the representatives of our profession, who are best qualified to assess matters relating to the compliance with the Code and the practice of the profession;

d) Creating a new, third legal profession, the so called legal consultants, whose powers would be similar to those of legal advisers and advocates, in spite of much lower requirements as to the professional skills of persons practising that profession. Unfortunately, the name 'legal consultant' in the Polish language could be additionally misleading for the Clients as in Polish it sounds very similar to the title of the 'legal adviser'. In this way the Polish politicians have decided to seemingly improve the situation of numerous young people graduating from law schools every year and enable them to operate in the market within a new professional organisation. These are ill-considered proposals because, firstly, the creation of a legal profession where access will not be restricted by relevant traineeship and examination will be misleading for the clients and, secondly, it will improve the situation of young lawyers only seemingly and in a short term, as they will become members of a second-rate legal corporation instead of obtaining full qualifications in the profession of advocate or legal adviser.

e) Introducing maximum rates for legal services, and I wish to emphasise here that you have not misheard me – the Polish Minister of Justice has decided that he can exclude legal services from the free market; that proposal did not refer to the maximum rates refunded by the State for aid provided to the poor, it did not refer to the maximum rates that the party losing a trial must refund to the opponent

– that proposal referred to the maximum rates lawyers may apply in relations with their Clients, also entrepreneurs. You must admit that this proposal is bizarre, to say the least.

f) Additionally, the Polish Ombudsman claimed that the obligation of advocates and legal advisers to belong to the Bar violates the Constitution, and filed a relevant petition with the Polish Constitutional Tribunal. According to that petition, membership in the Bar should be voluntary, similarly to membership in the associations or Chambers of Commerce for entrepreneurs.

g) Recently a new law implementing Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market was introduced in Poland. This new internal law significantly affects the lawyers' profession and its broad extent would require a separate presentation. Here it is worth to mention that the new law allows for establishing the joint law firms with other professions (patent attorneys, tax advisors) and also with the new legal entities with stronger capital impact (limited joint-stock partnership).

Another issue is the plan to merge the professions of legal adviser and advocate, but due to the lack of agreement between the Bars the work on that project has been temporarily suspended.

These are only some examples of the steps taken recently by the State authorities with respect to our Bar. You can find more information in the written report that will be distributed during the Conference in the written form. The above examples clearly show, however, that in recent years legal advisers have faced chaotic and forced “modernisation”, and I am using the term modernisation in inverted commas here as that so-called “modernisation” is more of a threat to the fundamental principles of our profession than a change intended to improve our competitiveness and adjust us to the changed social realities, which was the case in previous years.

Politicians justify the need to introduce the changes I talked about earlier with various, usually populist, arguments such as:

- Excessive costs of legal services;
- Insufficient number of lawyers;
- Difficult access to the profession for young people;
- Lack of objectivity in disciplinary jurisdiction exercised by members of the Bar;

The Bar has repeatedly presented factual arguments contradicting the above statements to a large extent. Agreeing that some changes are necessary, the Bar has also suggested implementing essential solutions that might improve – where necessary – the practice of the legal professions. So far, the policy of the Bar in that respect has not brought the intended results. In great majority, politicians, driven by their short-term goals, implemented changes in law without taking into account the opinions of the Bar. Frequently, the Bar was not actually consulted on draft acts relating to our profession. The fact that a lot of such laws were later declared invalid by the Constitutional Tribunal as they were contrary to the Polish Constitution did not prevent the legislators from replacing them with new regulations that, in our opinion, were also contrary to the Constitution.

The Bar has decided to counteract that situation by taking such steps as – for instance - the implementation of a new information policy, which so far has been a type of activity characteristic for large companies or political parties but not the Bars.

In my opinion this is a part of a larger issue that should be important for all the Bars that are members of FBE, irrespective of the conditions existing in our countries. We must ask ourselves if the management methods in our Bars change fast enough – as fast as the way each of us practises the profession, as fast as the law firms we work in, as fast as the Clients we work for. I believe it is time for a new way of thinking about the management of the Bars: we can no longer treat them as lonely islands or even “extraterritorial zones” excluded from the economic and political realities of our

countries. We can't only review from such independent zones the decisions taken by politicians with respect to our profession. We should "enter the game", so to speak, be in the centre of action and not only react to events but anticipate them, forcing politicians to take our actions into account. Such anticipation could, for instance, involve presenting solutions that are in line with our goals even before politicians translate their ideas into draft acts. We must present our solutions to the public as a real alternative to the solutions proposed by politicians before the latter manage to win over the voters. The position of our Bars is usually based on solid factual grounds and with the use of appropriate tools we can convince a lot of people. On the other hand, it is no use defending less important matters with regard to which it would be very difficult to win over the public.

Without compromising the values we want to respect in our profession, we need to manage our Bars like we manage our law firms. We have to focus on efficiency and the achievement of established goals, and use marketing and 'Public relations' tools. I realise this is difficult in such unique organisms as the Bars, which are more focused on internal discussion than establishing and achieving goals but, in my opinion, it is absolutely necessary. I would like to tell you now about a few PR-related actions taken by our Polish Bar. I hope our experience will be of interest to you and perhaps you will be able to benefit from some of our achievements. Only few examples of these actions include:

- 1) Regular appearances of the representatives of our Bar in the press, on the radio and television to present the Bar's position on the key issues relating to our profession. To establish and maintain proper relations with the media, a Press Centre has been set up by the national Bar.
- 2) Regular monitoring of the media to select publications presenting information that is untrue or unfavourable to our Bar. Without structured knowledge of the publications concerning the Bar, it would be difficult to start an effective campaign to build a positive image of the Bar.
- 3) Appointment of spokespersons in all the local Bars;



4) Organisation of a campaign for legal advisers to sign a letter to the Prime Minister of Poland regarding draft amendments to the laws concerning legal advisers;

5) “The Blue Umbrella Campaign” – blue is the traditional colour of Polish legal advisers. The Blue Umbrella is an annual countrywide event where legal advice is provided to people in need who cannot afford paid legal services. For one whole week, in the registered offices of all the local Bars in Poland, free-of-charge legal advice is provided with respect to a selected topic that is the main theme of the campaign (for example consumer matters or labour law). Every year, the campaign proves to be very popular among both people in need and the media. It helps to build a positive image of legal advisers.

6) Organisation of meetings with politicians, representatives of public administration and authorities in the field of law in order to present the position of our Bar directly where decisions that affect us are made.

The Polish experience shows that we cannot prevent the changes that affect both us as individual lawyers and our Bars. Since changes are inevitable, we should rather concentrate on ensuring that they do not violate the fundamental principles we wish to protect. Looking from our Polish perspective, it is clear that we cannot limit ourselves to just providing opinion on changes presented to us by politicians – we must be pro-active and always one step ahead – if there is a clear position of the Bar on any matter, we should try to persuade the public to support that position before politicians present their proposal.

Thank you for your attention, I hope that our Polish experiences will contribute to the discussion today and a real, properly directed reform of the legal profession in our countries.