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Министарство правде
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Republic of Serbia
Ministry of Justice
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COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE

-Mr. Aldo Bulgarelli, President-

Rue Joseph II, 40/8-B
1000 Brussels
Belgium

Belgrade, 03 October 2014

Dear Mr. Bulgarelli,

Thank you very much for your September 30, 2014 letter, addressed to the Prime Minister, cc-ed to the Minister of Justice. It was given to me for further handling and response.

Foremost, we highly appreciate your offer of assistance regarding Chapters 3, 23 and 24 and are looking forward to our cooperation in this regard. Indeed, some of the issues raised in your letter and hereinafter to substantial extent relate to the Serbian alignment with the *Acquis* and the best EU practices.

Regarding the issue of the (re)introduction of notaries into the Serbian legal system, please allow me to make a few remarks.

Being a lawyer myself (presently at the Ministry of Justice) I, of course, tend to sympathize with the bar's interest. However, as we all well know, the proverbial devil often tends to be in details. For example, there is a major difference between the meaning of "exclusive right to draft documents" (as stated in your letter) and the exclusive right to authenticate documents – which is actually provided for in the relevant Serbian legislation. The difference, obviously, means that lawyers do have a right to draft documents; however, the authentication power/authority has been transferred from the courts to the notaries. This seems to be a common practice in the majority of European countries which follow the so called Latin¹ system of notaries.

¹ Civil Law notary system (Latin notary system) plays an important role in the real estate operations in the most countries of Civil Law legal system and some countries of Common Law Legal System. It has been proven to be more efficient than the Anglo-American notary services model when considering the recent mortgage crisis in the U.S., because the intervention of the Latin notary improves the fairness, the overall quality of documentation, the overall safety and trustworthiness of the real estate operations.

Further, the drafting of the real estate contracts has been done by some, not all, of the practicing lawyers (as many lawyers practice solely criminal defense), as well as by a number of real estate agents and other persons with or without legal education. This is indeed one of the reasons why the authentication powers were given to the notaries.

Accordingly, your statement that services normally provided by 8500 lawyers have been transferred to 94 notaries does not correspond to the real situation. Notably, the number of notaries will be increased throughout this transitional period to 370 and probably more and will correspond to the number of courts that had provided some of the authentication services before. Each notary office employs assistants and administrative staff, thereby increasing the total number of the professionals engaged. Since not all the planned notary posts have been filled yet, some of the courts presently provide notary services contemporaneously with notaries.

We look forward to your looking into these issues in the light of EU law, after gathering all of the relevant information. Of course, your detailed knowledge of the notary systems throughout member states, as well as your possible cooperation with the relevant notaries' chambers in this regard, may show to be of great help to us.

However, since you expressed a concern regarding the right of citizens' access to a lawyer, let me, please, inform you that there is an ongoing strike by the members of the Serbian bar seriously infringing upon said right. This is the second work stoppage this year. First one was held in June and lasted for two weeks. The sole objective of the first strike was to lower lawyers' taxes. This one has started on September 18 and is still ongoing. The announced strike requests are: to lower lawyers' taxes; to repeal the notary-related legislation; and to dismiss the Minister of Justice.

As a result, court hearings are not being held, criminal cases may not even start without a lawyer – the entire Serbian judiciary is halted, with all the detrimental consequences to the citizens' fundamental rights.

Few additional points in this regard may be instructive:

- The strike is illegal, i.e. contrary to the clear language of the Law on Lawyers and contrary to Serbian Constitution,
- Not all the lawyers willingly participate in the strike, however they are (contrary to their constitutional and legal rights) threatened by disciplinary actions (some already commenced against the lawyers that appeared at hearings) if they refuse to participate in the strike,
- In order to avoid possible legal consequences for an illegal strike (and the devastating consequences caused thereby to the judicial system in Serbia) the leadership of the Serbian bar has suggested to the lawyers to lie to the courts as to the reasons for their

travel out of the place of residence, you do not do criminal defense law, do not answer to unknown phone numbers, etc.)”,

- The strike provides (un)intended help to criminal defendants, including ongoing notorious cases, in which well-known white collar defendants are defended by the very organizers of the strike,
- The announced objectives of the strike include clearly political request – the dismissal of the Minister of Justice. (This government was formed as a result of democratic elections, won by the highest percent of votes ever in Serbia, since the multiparty system was introduced). Further, the tax issues are entirely within the jurisdiction of the Ministry of Finance,
- The status and legality of the present leadership of the bar, both on Serbian and Belgrade level is questionable, to say at least, as I am sure you and/or your organization are aware of, having received all the correspondence from various divided groups of lawyers so far.

I wonder whether you would, please, also look into the above issues in the light of EU law and/or member states' practices. It would be instructive to learn whether a strike under these circumstances comports with your understanding of EU law.

We would, of course, be delighted to meet you at your convenience and to discuss these issues further.

Finally, we would highly appreciate if the CCBE would point out to the Serbian bar the inappropriateness of the ongoing strike, unless, of course, you believe that the above described strike is in line with the EU law.

Very truly yours,

Cedomir Backovic

Assistant Minister of Justice
Republic of Serbia

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.