

Education and Specialization in the Legal Profession

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Introduction

Since 1990, the Republic of Croatia has gone through several legal and political changes. The first major change was the change in the political and legal system brought about by the introduction of the multi-party system and a different concept of ownership. This was followed by the independence of Croatia and the adjustment of the legal and political framework, before and after the accession to the European Union.

Such conditions gave rise to many amendments to the existing legislation, preventing the formation of stable court practice, and also establishing the attitude that reforms and filling legal gaps cannot be achieved by means of training and specialization of the actors involved (primarily judges and lawyers), but rather by changing the law. This creates a vicious cycle because each legislative amendment creates a new uncertainty and legal gap, which consequently contributes to and perpetuates the issue of a judicial backlog.

At the same time, the development of the economy and technology, both in Croatia and globally, posed new challenges to the legal profession. Nowadays, most of the economy revolves around intangible assets (as exemplified by high-tech companies in the world and in Croatia), the successful protection of which requires a specific legal framework and regulations. Due to the necessity of adaptation to those new circumstances, law is increasingly becoming a creative profession rather than a skill.

Three factors extremely important for the legal profession follow from the above:

- a) ensuring harmonization of the curricula at law schools with the new market trends and needs;
- b) a high level of skill, continuous education of judges and lawyers, and specialization through work and practice;
- c) court specialization and concentration of specific knowledge.

In this document, AmCham presents its recommendations for the improvement of the existing system and practices related to training in the legal profession in Croatia at all of the levels mentioned above.

State of play in Croatia

With regard to education in the legal profession, in Croatia it is possible to identify deficiencies at multiple levels: in higher education, work practice prior to eligibility of independent work in the legal profession (lawyer or judge), professional training at the workplace, and gaining experience by working.

Inconsistencies between the education system and employers' needs

Legal practitioners in Croatia receive education at law schools. There are four of them, at the universities of Zagreb, Split, Rijeka and Osijek. Those law schools create their own curricula independently. Apart from the theoretical area, some law schools require their students to spend a certain part of their studies (a total of three weeks, in their fifth year as a rule – depending on the school) undergoing practical training at a lawyer's office, at a court (or some administrative body) or one of the companies from the list drawn up by the law school. Lately, all law schools have been encouraging their students to participate in moot court initiatives (both international and local) simulating a courtroom with the aim of learning, and in legal clinics organized alongside law schools, where students provide legal counselling services for the purpose of practical training. Participation in such initiatives is purely voluntary.

Even though the creation of the curriculum undeniably depends on the effort and decision of a given law school, there is, in practice, the issue of the inconsistency between the needs of the job market and employers and the practical know-how with which young people enter the job market after graduation. This is not specific to higher education in Croatia. Consequently, employers invest substantial effort to train young legal practitioners for specific tasks once they have hired them, which indicates the possibilities of further improvements to the existing curricula. Among other things, a low level of acquired practical skills implies that the period of time students spend in professional practice is too short, i.e. that the duration of their professional practice is too short for them to acquire a sufficient amount of practical know-how along with theoretical knowledge.

The fact that contemporary economies largely rely on the value of intangible assets and intellectual properties cannot be disregarded either. However, they are not a part of any compulsory study program at any of the aforementioned universities and law schools as a separate course and/or unit. As a rule, law schools do not pay any significant attention to the subject of intellectual property rights until the last years

of study, and even then they are elective rather than compulsory courses within the scope of which this field of law is treated as a unit or possibly a separate course.

Insufficiently structured process of becoming qualified for independent work in the legal profession

As a rule, having completed his studies and spent a certain number of years working, a young legal practitioner qualifies for a bar examination. The bar examination consists of a written and oral part. In the written part, legal practitioners draft judgements based on documents from civil and criminal law, after which they can choose between an administrative, labor and commercial case. The oral part of the examination is divided into subject groups: civil law cases and commercial law, civil procedural law cases, criminal procedural and criminal law, labor and administrative law as well as the Constitution, organization of the judiciary and European law. Passing the bar examination is one of the prerequisites that future lawyers and judges have to meet.

A legal practitioner who has spent at least three years working for an attorney-at-law (or more years if they have worked in the private sector) may become an attorney-at-law¹. Similarly, once they gain enough working experience and pass the bar examination, they may become a judge of a lower-instance court². However, at this moment there is no system of structured practice which would guarantee that candidates for the aforementioned positions possess a harmonized minimum of knowledge and skills at the moment of meeting the formal prerequisites for the aforementioned professions. Furthermore, it is also questionable whether the aforementioned years of work experience (three for a lawyer and generally five for a judge) are sufficient to become an attorney-at-law or judge.

Lack of concrete incentives for continuous education of judges and lawyers

The education of judges in Croatia is laid down in the Courts Act and the Judicial Academy Act. In Articles 87 and 93, the Courts Act prescribes the right and duty of continuous professional training of judges. However, despite the aforementioned provisions, pursuant to the Courts Act, a judge is obliged to participate in training programs organized by the Judicial Academy or within the European Judicial Training Network only once a year³. Moreover, participation in such professional programs and training workshops for judges is in no way recognized explicitly in the evaluation of judges for promotion purposes. When evaluating judges for promotion purposes,

¹ Article 48 of the Legal Profession Act

² Article 51 of the State Judiciary Council Act;
Articles 21, 22, and 28 of the Judicial Academy Act

³ Article 93(3) of the Courts Act

participation in professional training of judges as lecturers in seminars and workshops is taken into consideration among other things, but involvement as a participant of such programs and seminars is not⁴. As can be expected, the lack of concrete incentives for judges to participate in training programs discourages judges from actively participating in such training. Judges thus do not keep abreast of amendments to the legislation or the current practice, e.g. that of the European Court of Human Rights in Strasbourg or European Court of Justice in Luxembourg. Furthermore, certain areas of law are extremely complex today, requiring narrow specialization of courts and judges (e.g. financial law, intellectual property).

The state of play and practice are, in essence, contradictory to the need for the continuous education of judges for the purpose of establishing and maintaining a judicial system which resolves cases efficiently and constructively.

Continuous education of lawyers is carried out at the Lawyers' Academy, which is also not compulsory. The comments related to courts may be applied to lawyers *mutatis mutandis*.

Methods of gaining experience and specialization through work

Along with continuous education and professional training, working actively in a certain field is one of the key methods of gaining knowledge and skills in every profession, including the judicial profession. Judges who spent a lot of time working on cases from one area of law gain knowledge and skills that enable them easier performance of their day-to-day duties, i.e. resolve cases from that particular area. This is particularly highlighted and relevant in the areas of law which are specific and yield a smaller number of cases, making it harder and more challenging to gain practical experience. Furthermore, the retirement or transition of a judge with a longer/richer work experience in such areas to another or higher-instance court often results in the loss of experience and knowledge which is hard to compensate, which also has a negative impact on the efficiency of the institution. An example of such specific area of law is the aforementioned intellectual property law as well as some other areas such as tax law and administrative law.

AmCham deems that insufficient attention is paid to the issue of "specialization through work" when planning appointments at courts, and that the retention and concentration of skills are insufficiently incentivized.

⁴ Article 57(1)(5) of the Courts Act
Articles 6(1)(4) of the Methodology for the Evaluation of Judges

Examples of good practice from the EU

An example from Germany, which is the closest to the Croatian cultural circle, is the structuring of practice until the moment when a young legal practitioner becomes a lawyer or judge, through the institute of *Rechtsreferendariat* ("legal apprenticeship").

Legal apprenticeship for legal practitioners means a period of two years, which begins with the passing of the first state examination and ends with the passing of the second state examination, whereby apprentices becomes qualified for judicial duty. On the basis of the same examination, apprentices gain qualifications for the service of prosecutor, lawyer and notary public. The German Bar Association, in cooperation with the Justizprüfungsamt (state judicial authority), organizes and structures the apprenticeship program, implemented at 24 Higher Regional Courts in Germany. Each region, along with each Higher Regional Court, has its own rules. Apprenticeship is divided into multiple compulsory areas and an elective area. Apprenticeship in the areas of civil law, criminal law, administrative law and lawyer practice is compulsory.

In most of the federal states, apprenticeship begins with civil law training at a municipal or regional court. This is usually followed by training in criminal law at a criminal court or the state prosecutor's office. The third milestone in almost all of the federal states is training in administrative law at a body governed by public law or at an administrative court, while the fourth round of training is at a lawyer's office. There are various options available for training in the elective area. Training in the elective area can take place at the state prosecutor's office, a body governed by public law, a lawyer's office or even abroad.

During apprenticeship, emphasis is also placed on practical skills and relevant theoretical knowledge. In order to complete the apprenticeship, the apprentice finally takes the second state examination. Accordingly, a part of the apprenticeship is dedicated to preparations for the examination. Lectures are held, along with mock examinations. After the introductory course, four-hour lectures are held on one day in a week. The number of lectures increases dramatically toward the end of the apprenticeship, ending with the state examination, which consists of several examinations from multiple areas of law. The total number of examinations depends on the federal state. Passing the second state examination confers the full legal qualification.

Recommendations

For the purpose of improving the system and current practices related to education for and in the legal professions in Croatia, AmCham hereby makes the following recommendations:

Introducing changes to the higher education system

Increasing the number of hours of compulsory practice at law schools

With regard to the fact that the current model of professional practice in the course of the study program has proved to be inadequate for the acquisition of a sufficient number of practical skills, we recommend that law schools increase the number of hours of compulsory practical work, following the example of medical school programs (naturally, not to the same extent and *mutatis mutandis*). The number of hours of compulsory practical work should be sufficient to enable the acquisition of basic practical knowledge, which would enable students a simple transition from the academic to the professional environment, and which would make them more employable from the perspective of employers.

The possibility of introducing compulsory practical work in all years of study would also be worth considering so that the participants of the study program might supplement their relevant theoretical knowledge with practical skills.

Introducing intellectual property law as a compulsory subject at the graduate level

The curricula should be harmonized with the contemporary needs of the job market – with emphasis on the importance of learning about intellectual property law as the basis of contemporary economies, through the introduction of intellectual property law as a compulsory subject at law schools. This would enable the creation of a wider knowledge base in the area of intellectual property law, which would, in the end, have an impact on the efficiency of the enforcement of intellectual property rights as well as raise awareness of the relevance of this area of law for modern economies.

Structuring the practice of becoming qualified for independent work in the legal profession

In order to ensure that all candidates for the professions of lawyer and judge undergo approximately the same training and in all the relevant areas of law in practice, we recommend that the Croatian system adopts a structured model of practical work, following the German example.

Judge and lawyer training

Introducing continuous compulsory training of judges and lawyers

With the aim of ensuring that judges have continuous access to new knowledge and good practices in the relevant area, training at the Judicial Academy should be made compulsory, and special regulations should be adopted to set out a higher frequency (more than once a year, with precise criteria, in the sense of its content) for the fulfilment of this obligation. This would simply increase the amount of available knowledge and skills in the judicial system through the use of the existing resource, namely the Judicial Academy.

Introduction of an advancement system and pay grading within courts

As an additional step toward the improvement of the system, we recommend the introduction of an advancement and pay raise system within courts, which would enable grading according to criteria set out in advance. Participation in relevant workshops within the scope of professional training could be prescribed as one of the explicit areas for advancement within the internal court hierarchy. This would, among other things, prevent transitions of judges to higher-instance courts for the purpose of advancement, and appointment of judges with less experience to lower-instance courts since in the current system the only way to advance is to transition to a higher-instance court.

Gaining experience and specialization through work

Another key part of the judicial system is the concentration and specialization of courts for special areas of law where this is justified due to the specific subject matter and/or the number of cases as well as good personnel planning at courts, which enables a continuous existence of knowledge and skills at a given court as well as the acquisition of specific knowledge and skills through the resolution of cases from a certain area. Therefore, it is necessary to take the above into consideration when planning the organization and structure of the judicial system. Examples of such specialization include, for example, earlier recommendations by AmCham regarding the concentration of disputes in the area of intellectual property law, particularly patent law.

Conclusion

The judiciary is a key link in the development and stability of a country. An unstable judicial system affects the behavior of participants in a legal transaction, promotes the culture of default, and has an adverse impact on the investment climate as well as the exchange of goods and services. A quick and stable system which can be achieved using the recommended measures, at relatively little cost, can lead to a significant improvement of the system, improve the ranking of Croatia on the Doing Business scale, and contribute to the improvement of the quality of life of all citizens of the Republic of Croatia.

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