

BAR ASSOCIATION OF SERBIA

LAWYERS

LEGISLATION OF THE REPUBLIC OF SERBIA

REVIEW OF LEGISLATION OF THE REPUBLIC OF SERBIA

Constitution of the Republic of Serbia – “Official Gazette RS” 98/2006 – Article 67

Everyone shall be guaranteed right to legal assistance under conditions stipulated by the law.

***Legal assistance shall be provided by legal professionals, as an independent and autonomous service**, and legal assistance offices established in the units of local self-government in accordance with the law.
The law shall stipulate conditions for providing free legal assistance*

CONDITIONS FOR ENGAGING IN LEGAL PROFESSION IN SERBIA

The right to practice is acquired by:

- Passing a decision on registration in the directory of attorneys-at-law*
- Taking the oath (subject to paying costs of registration, and if foreign national – subject have to fil proof on the signed contract of insurance against professional liability in RS)*

A request of applicant for the registration in the directory of attorneys-at-law filed to the bar association in which territory the law office of applicant will be.

THE FIELD OF ACTIVITY (ARTICLE 16 – LEGAL PROFESSION ACT)

Attorney-at-law has the right to practice law in the entire territory of the RS

The Attorney-at-law has the right to practice law in the territory of the foreign state in accordance with the ratified international agreements and legislation of the state on the right to work of foreign lawyers.

CONDITIONS FOR REGISTERING IN THE DIRECTORY IN SERBIA (ARTICLE 6 LEGAL PROFESSION ACT)

1. *A law degree earned in RS/recognized*
2. *Passed bar exam and attorney-at-law exam in RS*
3. *Citizensship of the RS*
4. *General health and full working capacity*
5. *Unemployment*
6. *No criminal record for felony that would make an applicant unworthy of confidence for the practice of law*
7. *The absence of other activities*
8. *Worthiness of the practice of law*
9. *Provided convinient workspace, technical requirements*
10. *At least three years have elapsed since the final decision to refuse the applicant of attorney-at-law to be registered*

CONDITIONS FOR REGISTERING IN THE DIRECTORY IN SERBIA (ARTICLE 14 LEGAL PROFESSION ACT)

A foreign national attorney-at-law may be registered in Serbia if:

She/he is member of the bar in his state of origin in accordance with the laws of the homeland and if (depending on the type of registration) meets all requirements except for:

Register A – a recognized law degree, passed bar exam and attorney-at-law in the RS, citizenship of the RS

Register B – a recognised law degree, citizenship of the RS, but must have passed the bar exam and attorney-at-law exam in RS

LEGAL PROFESSION OF A FOREIGN NATIONAL (ARTICLE 25 – LEGAL PROFESSION ACT)

Two options for practice/registration – register A and register B

*REGISTER A: **limited** to giving **oral and written legal advice and opinions** regarding the application of law of the lawyer's home county and international law*

*REGISTER B: **equated** with the activities of domestic attorney-at-law provided that in the **period of three years** from date of registration he/she may act in the RS only in **conjunction** with local counsel*

The provisions of the Legal profession Act referring to domestic attorney-at-law apply to the work of attorneys-at-law foreign nationals, unless otherwise prescribed by Act, the Statute of the bar association and the Code of Professional Ethic.

After three years of continuous legal practice in Serbia as an attorney-at-law who is registered in Register B shall acquire the right to submit a request for entry in the Directory of Attorney-at-law who are nationals of RS without examining the entry requirements. (Article 13 – Legal Profession Act)

LIMITS TO THE RIGHTS OF FOREIGN ATTORNEYS-AT-LAW (ARTICLE 26 – LEGAL PROFESSION ACT)

Not entitled to:

Elect and be elected as member of bodies and holders position in the Bar Association of Serbia or in the authorized bar association

Hire law trainees to perform the trainee exercises in accordance with the Act

Be appointed as temporary agent, tax agent or ex officio council, nor to provide legal aid in accordance with applicable regulations, nor to be a representative of a party is exempt from payment of court costs/mediator

LEGAL AID AND SERVICES

***ACCORDING TO NACE REV.2 – STATISTICAL
CLASSIFICATION OF ECONOMIC ACTIVITIES IN
THE EUROPEAN COMMUNITY – Council
Regulation (EEC) 3037/90:
LEGAL AID IS ECONOMICAL ACTIVITY BUT
NOT SERVICE***

LEGAL AID AND SERVICES

The term "market" cannot be used for advocacy as a professional activity because of the profession specific rules:

- free choice of lawyer – attorney-at-law – as guaranteed human rights*
- The relationship of trust between lawyer – attorney-at-law and client*
- Keeping professional secrets – as guaranteed human rights*
- Strictly defined rules for acceptance and rejection of representation*
- Limited opportunities for advertising*

ANALYSIS OF THE HARMONISATION OF DOMESTIC LEGISLATION WITH EU LEGISLATION

Enacting of Law in 2011 greatly liberalised the legal profession access to the legal profession for foreign lawyers.

On February 2014, three foreign attorneys at law are evidenced as listed in Register A.

Legislation is partially aligned.

Amendments and supplements to the Legal Profession Act and bylaws shall be considered regarding:

- treatment in individual cases before the courts*
- equal conditions for performing professional duties in accordance with EU regulations*

In the following period work on achieving full approximation and implementation of the acquis will be conducted. Expert analysis requested through PLAC Project (second quarter of 2015).

CCBE PECO COMMITTEE COMMENTS ON SERBIA LEGAL PROFESSION ACT

CONCLUSIONS

*The “Legal Profession Act” is clearly aiming to ensure a **modern system of regulation** of the profession of lawyers in Serbia.*

*The Law seems to reach a good equilibrium between State rules and self regulation, which is a fundamental guarantee for an autonomous and independent performing of the legal profession. **It respects all the Core Principles** of the European Legal Profession set forth by the CCBE and almost all the relevant rules at a European and International level.*

Only a call for a more strict and express defense at a State level of the basic guarantee of confidentiality (not only intended as a duty for lawyers but as a fundamental human right for clients) can be highlighted, even if it could have been provided for in the procedural codes.

Furthermore, it should be noted that current provisions regarding the Registers A and B of foreign lawyers do not comply with the Directive 98/5/EC

*The Law requires as a condition for registering in the directory of attorneys, inter alia, the “**citizenship of the Republic of Serbia**” (Article 6). Serbia is not obliged to comply with the Lawyers Directives until it becomes a Member of the EU.*

CEFTA AGREEMENTS

Lawyers who are registered in the directory of lawyers in CEFTA Parties should be allowed to practice as attorney-at-law in the territory of each member of CEFTA agreement under the terms established by its laws and international regulations.

Allowing the attorneys-at-law from states – member of CEFTA agreement is in the interests of citizens and to ensure the right to a fair trial.

Bar Association of Serbia has launched an initiative in 2010 to facilitate cross-border activities for attorneys-at-law in the former Yugoslavia.

However, Croatia which then was a member of CEFTA Agreement and Macedonia didn't accepted this initiative. At the present time Bar Association of Serbia and Bar Association of Montenegro have signed agreement about facilitating cross-border activities for attorneys-at-law.

Bearing on mind differences between the members of the CEFTA agreement we believe that this issue should be regulated by international agreements on which it will be carried out and the harmonization of national legislation.

THANK YOU FOR YOUR ATTENTION

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