

Executive summary

The Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter: GVH) initiated a competition supervision proceeding against Békés Megyei Ügyvédi Kamara (Bar Association of Békés County, hereinafter BMÜK) for excessive and discriminatory registration fees.

The proceeding aimed to decide whether the above mentioned practice was suitable to restrict competition pursuant to the Hungarian Competition Act and Article 81 of the EC Treaty.

Definitions

The *bar association* is a public body of attorneys based on the principle of self-government and engaged in performing professional duties and duties in connection with interest representation. In the course of doing so, among others it makes decisions concerning the initiation and termination of attorneys' membership in the bar association, and registers assistant attorneys, assistant European Community jurists, articulated clerks, European Community jurists, foreign legal counsels and law firms, and law firms in separate registers. The enrolment in the respective register kept by the bar association is a precondition to be able to pursue the legal activities pursuant to the Act XI of 1998 on attorneys at law.

The bar association shall function as regional associations (hereinafter referred to as "bar association") and as a national association (Hungarian Bar Association).

The regional bar associations determine the amount of the registration fees freely, since there are no relating national provisions.

In order to be an *attorney* the jurist shall meet the conditions pursuant to the Act on attorneys at law, among others to have a law school degree and to have taken the Hungarian bar examination. Furthermore the jurist must apply for the membership in one of the bar associations, as only bar association members may exercise a praxis as attorneys.

A *European Community jurist* is a person with the right of free movement and residence who is authorized to practice law in any Member State of the European Economic Area under any of the professional designations stipulated in specific other legislation.

The bar association shall admit any European Community jurist who satisfies the conditions set out in the Act on attorneys at law.

Assistant attorney means an attorney who practices law on the basis of an employment relation created with an attorney or a law firm. An assistant attorney shall not handle the matters specified by the Act on attorneys of law independently; he may participate in such cases only within the attorneys scope of liability and under the authority or the control of the attorney.

Only assistant attorneys who have been entered in the bar association's register of assistant attorneys may practice law.

The assistant attorney is not a member of the bar association.

An *articled clerk* is a person with a law school degree who has been engaged in legal practice for the amount of time required to pass the bar examination.

In order to be able to pursue the activities of an articulated clerk the person shall be entered in the bar association's register of articulated clerks. However, the articulated clerk is not a member of the bar association.

A *foreign legal counsel* is any person who is engaged in the legal activities specified in the Act on attorneys of law on the basis of a cooperation contract concluded with a Hungarian

attorney or law firm. A foreign legal counsel may conduct his activities only on the basis of an agency provided to the attorney or law firm with which he has concluded a cooperation contract. If the cooperation contract so provides, the foreign legal counsel may accept agencies in his own right within the realm of his activities.

In order to be able to pursue the activities of a foreign legal counsel the person shall be entered into the bar association's register of foreign legal counsels. However, a foreign legal counsel is not a member of the bar association.

Undertakings involved

The competition supervision proceeding related to the practice of Békés Megyei Ügyvédi Kamara (Bar Association of Békés County, BMÜK), the regional bar association in Békés County.

Procedure

The GVH initiated a competition supervision proceeding against BMÜK on 7 May 2007 pursuant to the provisions of the Hungarian Competition Act. In the course of the proceeding the GVH noticed that the behaviour investigated may affect trade between Member States, thus the procedure was extended to an assessment pursuant to Article 81 of the EC Treaty as well.

Facts

The legal activities as regulated by the Act XI of 1998 on the Attorneys at Law pursued by attorneys, assistant attorneys, European Community jurists and foreign legal counsels have to be regarded as relevant products.

Having regard to the fact, that the legal activities defined above may be pursued under typically equal conditions in the territory of Hungary, the relevant geographic market is the territory of Hungary.

The regional bar association is a public body, which has a representative and administrative apparatus and an independent budget; within its operational area, it fulfills the duties assigned to its jurisdiction by the Act on the Attorneys at Law, as well as in its statutes and rules and regulations. Such duties are among others making decisions concerning the initiation and termination of the attorneys' membership in the bar association, and registering assistant attorneys, assistant European Community jurists, articulated clerks, European Community jurists, foreign legal counsels and law firms, and law firms.

The presidency of the BMÜK determines the amount of the registration fee in order to be a member of the bar association or to be registered in the relevant registries respectively and the amount of the monthly bar association membership fee.

The table below shows the level of the registration fees applicable to attorneys, European Community jurists and foreign legal counsels and that of the monthly bar association membership fee. Among attorneys distinction is made between (1) jurists, who pursued their legal practice required to pass the bar examination in an other way than an articulated clerk registered by the BMÜK and previously were not members of other bar associations (marked in the table as "general"), (2) jurists, who pursued their legal practice required to pass the bar examination as an articulated clerk registered by the BMÜK (marked in the table as "former BMÜK article clerk) and (3) jurists, who were members of another regional bar association already and wish to switch to BMÜK (marked in the table as "re-registry").

	REGISTRATION FEE (HUF)					MEMBERSHIP FEE (HUF/MONTH)
	Attorney			European Community jurist	Foreign legal counsel	
	General	Former BMÜK article clerk	Re-registry			
1997	25 000	25 000	25 000	n. a.	25 000	3 100
1998	25 000	25 000	25 000	n. a.	25 000	3 850
1999	25 000	25 000	25 000	n. a.	25 000	4 500
2000	25 000	25 000	25 000	n. a.	25 000	4 100
2001	25 000	25 000	25 000	n. a.	25 000	4 100
2002	30 000	30 000	30 000	n. a.	30 000	4 100
2003	30 000	30 000	30 000	n. a.	30 000	4 100
2004	40 000	40 000	40 000	n. a.	40 000	5 000
2005	132 000	66 000	132 000	132 000	EUR 2 500 (ca. HUF 625 000) + EUR 500/Year	5 500
2006	132 000	66 000	132 000	132 000	EUR 2 500 (ca. HUF 625 000) + EUR 500/Year	5 500
2007	500 000	150 000	500 000	500 000	EUR 2 500 (ca. HUF 625 000) + EUR 500/Year	6 500
2008	250 000	150 000	100 000	250 000	250 000	7 000
2009	150 000	150 000	150 000	150 000	150 000	8 000

As it is apparent from the table, the BMÜK increased the registration fee by a significant degree in 2005 and in 2007, where the actual degree differed by the groups of jurists and by type of registers. It has to be noted that most regional bars apply favourable registration fees for those, who spent their legal practice as article clerks registered by the respective regional bar.

According to a record of the management meeting of BMÜK, by the determination of registration fees for 2007 their actual aim was to put obstacles in the way of becoming an attorney. The record includes a reasoning according to which due to the convergence programme of the Government to be an attorney will be attractive for jurists from other legal professions, therefore a significant increase in the number of attorneys is to be expected.

Pursuant to Article 75(1) of the Competition Act where, in the course of competition supervision proceedings, parties offer commitments to ensure, in a specified manner, compliance of their practices with the provisions of the Competition Act or of Article 81 or 82 of the EC Treaty and if effective safeguarding of public interest can be ensured in this manner, the competition council proceeding in the case may by order make those

commitments binding on the parties, terminating at the same time the proceeding, without concluding in the order whether or not there has been or still is an infringement.

In 2008 the BMÜK set the registration fee for attorneys (who pursued their legal practice required to pass the bar examination in an other way than an articulated clerk registered by the BMÜK), European Community jurists and foreign legal counsels on equal level (HUF 250 000). The BMÜK submitted this decision to the GVH as commitments.

The GVH found that these commitments were not satisfactory to dispel the competition concerns, however, it considered the commitments worthy of further elaboration. The BMÜK submitted new commitments, according to which it undertook to apply a single registration fee of HUF 150 000 and to increase it by an agreed degree. The BMÜK also undertook to devote the part of the already collected registration fees beyond the level determined in the commitments to training of attorneys and articulated clerks.

Legal assessment

The GVH assessed whether the high amount of registration fees had the object or effect of restricting economic competition, thereby infringing Article 81(1) of the EC Treaty and Article 11(2)f, of the Hungarian Competition Act. The GVH found that on the one hand high registration fees may restrict the possibility of jurists to become an attorney, and on the other hand, this was the actual aim of BMÜK by increasing the fees.

Furthermore, the GVH identified two discriminatory practices:

- the determination of different registration fees for different jurists applying for entry into the same register (the register of attorneys); and
- the significant level of difference among the registration fees applicable to the single registers (register of attorneys and register of foreign legal counsels), whereby it has to be noted that the difference in the level of the registration fees in itself maybe justified.

Originally, the GVH found that the additional yearly registration contribution (EUR 500/Year) that had to be paid only by foreign legal counsels also could be discriminatory but in the course of the proceeding the BMÜK informed the GVH of the fact that foreign legal counsels do not have to pay yearly registration contribution from 1st February 2008.

The GVH found that the new commitments submitted by the BMÜK dispel the competition concerns by both decreasing the level of registration fees and thereby eliminating the effects of high registration fees to prevent market entries and by eliminating the discrimination between the groups of jurists obliged to register.

The GVH found that the commitments offered by the BMÜK are suitable to adjust its behaviour to the Hungarian and the Community competition rules.

Taking into account the inflation rate of the previous years in Hungary and the statement of the Hungarian Bar Association, according to which the registration fee of HUF 150 000 undertaken by the BMÜK amounts to the lower registration fees applied by the regional bar associations in Hungary, the GVH found that the amount of the registration fee in 2009 (HUF 150 000) is suitable to eliminate the market entry barrier.

The stipulation that the level of the registration fees can be increased only by the extent according to which the amount of the yearly membership fee paid by the attorneys had been increased ensures also in the long term that the amount of the registration fees cannot be increased by an extent that could enable to re-build market entry barriers. It should be noted that contrary to the registration fee the increase of the annual (monthly) membership fee is – at least to some extent – controlled also by the attorneys.

The GVH held that it is important that the registration fees should be equal for all groups of jurists and this should prevail in the long term (i.e. not only subsequent of the resolution of the GVH).

The GVH decided that there is no need to prescribe that the part of the already collected registration fees beyond the level determined in the commitments should be devoted to training purposes.

The order of the GVH

The GVH ordered the BMÜK to comply with its commitments to

- a) Determine the amount of the registration fee applicable to
 - attorneys, European Community jurists and foreign legal counsels,
 - those jurists, who pursued their legal practice required to pass the bar examination as an articulated clerk registered by the BMÜK, and
 - attorneys, who already were members of another regional bar association and wish to switch to BMÜKin HUF 150 000 as effective from 30 November 2009; and
- b) Increase the level of the registration fees at the maximum by the extent by which the amount of the yearly membership fee paid by the attorneys had been increased.