



28.2.2015

## NOTICE TO MEMBERS

**Subject: Petition 2474/2013 by Alina Frimu (Italian), on the striking off of lawyers established in Italy who are registered with the Bota Bar Association (Romania)**

**Petition 2476/2013 by G. C. (Italian), on the refusal in Italy to register lawyers from the UNBR Bota Bar Association in Romania**

**Petition 2484/2013 by Alessandro Pietri (Italian), on lawyers from the Romanian Bota Bar Association who have settled in Italy**

### **1. Summary of petition 2474/2013**

The petitioner reports that a circular from the Consiglio Nazionale Forense (National Bar Council) has called for lawyers established in Italy who come from the Bota Unionea National a Baroulilor din Romania (UNBR) Bar Association of Romania, to be struck off from registers of lawyers in Italy. This is apparently due to the fact that this Romanian professional body has been deemed illegal, as has also been confirmed by a note from the Romanian Ministry of Justice.

Conversely, however, the petitioner maintains that this body was established legally, in accordance with Romanian Law 51/59 of 2003, while other Romanian bar associations (UNBR) have apparently been convicted of rigging competitive examinations. The petitioner also alleges that lawyers registered with the Bota Bar Association are pursuing their profession in other EU Member States, such as Germany, Hungary, Belgium and Denmark.

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## **2. Admissibility**

Petitions 2474/2013, 2476/2013 and 2484/2013 declared admissible on 23 October 2014. Information requested from Commission under Rule 216(6).

## **3. Commission reply, received on 28 February 2015**

### Petitions 2474/2013, 2476/2013 and 2484/2013

As a preliminary remark, the Commission would like to note that the questions raised by the petitioners are identical in all three petitions.

The Commission has received several complaints concerning the issue of access to and pursuit of the profession of lawyer in Romania, as well as in other Member States. Some of those complaints come from lawyers, having obtained their professional qualification in Romania, wishing to establish in Italy. It appears that there are currently several Unions of Bar Associations operating in Romania: the National Union of Romanian Bars (U.N.B.R.) and the so-called National Union of Romanian Bars - Bota structure. Based on the information provided in the complaints, it seems that the legitimacy of the latter has been questioned in a note sent by the Romanian Ministry of Justice to the competent authorities of other Member States and as a consequence, the lawyers, members of the UNBR - Bota have

been prohibited from practicing their profession in those Member States.

Despite the revision of Law 51/1995 on the organisation and exercise of the profession of lawyer in Romania, as amended by Law 255/2004<sup>1</sup>, and a number of court decisions on the issue (including decisions by the Romanian Supreme Court of Justice), there is a lack of clarity with regard to the persons, lawfully authorised to practice the profession of lawyer, within the meaning of Directives 98/5/EC<sup>2</sup> and 77/249/EEC<sup>3</sup>, according to Romanian law.

In this regard, it should be pointed out that Directives 98/5/EC and 77/249/EEC set out the modalities for the practice of the legal profession in another Member State, respectively for establishment or provision of services, where access is granted on the basis of the professional title of another Member State. Whereas Directive 98/5/EC provides a framework for the establishment of lawyers in a Member State other than that in which they acquired their professional qualifications, including eventual full integration into the legal profession of the host Member State with the right to use the professional title of that Member State, Directive 77/249/EEC concerns only provision of services on a temporary or occasional basis by lawyers who do not have the intention to become fully integrated into the profession in a host Member State.

While the exact organisational arrangements of the legal profession and the effects that judgements may have remain within the competence of the Member States, any systemic legal uncertainty as to the authorised professional bodies for lawyers and as to the lawful exercise of the profession by their members has a direct effect on the proper functioning of EU law, namely Directives 77/249/EC and 98/5/EC, and on the rights of EU citizens to exercise fully the freedoms granted to them under EU law.

Therefore, the Commission is currently in contact with the relevant national competent authorities in order to clarify the issue and to identify the professionals, authorised to practice lawfully the profession of lawyer, as well as the legal entities in Romania, considered to be 'competent authorities' in the meaning of Directive 98/5/EC and Directive 77/249/EEC.

## Conclusion

The Commission is currently in contact with the relevant competent national authorities in order to clarify the issue and to identify the professionals, authorised to practice lawfully the profession of lawyer. The Commission will remain vigilant to this important matter.

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<sup>1</sup> According to Article 1(2) and (3) of law 51/1995 on the organisation and exercise of the profession of lawyer in Romania (as amended by law 255/2004):

"[...]

(2) The profession of lawyer is exercised only by lawyers registered in the table of the Bar of which they are member, Bar which is part of the National Union of Romanian Bars, hereinafter referred to as 'U.N.B.R'.

(3) The incorporation and functioning of Bars outside the U.N.B.R. are prohibited. Incorporation and registration acts of such Bars are null and void. The nullity can be established ex officio. "

<sup>2</sup> Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, OJ L 77, 14.3.1998, p. 36.

<sup>3</sup> Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, OJ L 78, 26.3.1977, p. 17.