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NEW LEGAL PROFESSION: PROFESSIONAL LEGAL ACTS' WRITER

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Abstract

There is a true need for establishing a new legal profession: professional legal acts writer. Writing laws and other legal documents isn't that easy to do, especially when it comes to writing general rules of behavior. Those general norms must be so general, to be applicable in any similar future situations, and yet, although very abstract in their content, must be comprehensible to any ordinary man, without any legal knowledge. Law is directed towards ordinary people, and they must understand fully what they are required to do.

In this paper we will explain why the professional legal acts' writer must be recognized as the new legal profession and why those people must have some special knowledge and skills, such as:

- general and specific legal knowledge in area in which they are working,
- good knowledge of the mother tongue, grammar rules and stylistic expression, as well as the same level of knowledge of at least one other world language (a lot of laws are dealing with legal transplants from other legal systems, it's good to know stylistic differences between those two languages),
- cultural and historical background of the state in which the law is written ,
- have certain level of understanding political circumstances, etc.

The author is pleading for this new legal profession, as the result of her 15 years long experience in this area of writing legal acts. The paper presents her personal recommendations and the improvement of this legal work.

Keywords: professional legal acts' writer, special knowledge and skills

1. Introduction

(Ordinary) people think, writing laws is just as easy as reading them. Everything that you need for this activity are the essential skills of reading and writing, that children learn preferably in the primary schools. Everything that can not be understood at the first glance, while reading those legal texts, must be wrong, bad or unjustified. „ Those lawyers do not know anything", you can hear in your surroundings very often. In our paper we will defend the thesis that writing laws and other important legal texts isn't that easy a job to be done, and especially, could not be done even by a simple graduate law student, but there are a lot of skills that should be implemented in this specific work.

At the beginning of July 2017, the Ministry of State Administration and Local Government of the Republic of Serbia decided to make an unusual move: a public procurement was announced for the drafting of amendments to the Law on Political Parties[1]. The subject of public procurement was described as „consulting services that will be provided for a period of 20 consulting days". Some specific activities must be done during those 20 (working) days , such as : the development of starting points for amending the mentioned law, preparation for public hearings after the amendmens are over and before they are send to the National Assembly , support in communication at public hearings for the representatives of the mentioned ministry, etc. After the first public outcry over this "nonsense" was over, the question was imposed: the activities listed in the public procurement are already performed by employees in the ministries. Was there a really need for official professionalization of law writing? Why is our state spending money on something that should be done by those who are already employed in ministries, there is probably a „political catch" in all this.

There is no doubt that the employees in various ministries have technically gone through a lot of such drafting of laws and everything that follows after that. Appropriate forms for writing laws and other general acts are often used, or especially when some new legal solutions are taken from other foreign legislations (without critically considering their effect in domestic law, we may say). Numerous cases of conflict of laws, incomprehensibility, the ambiguity of legal texts, as well as unusable laws in practice (because the theoretical foundation of a new solution has not been examined in possible practice and in combination with other regulations in the same field) speak in favor of our thesis in a slightly different way than has been done so far.It seems that employees are valuable for everyday work in ministries, and writing some legal texts that are usual in their everyday work. However,writing laws, which are legal texts with the highest legal power except the Constitution, is not and should not be a common job. That is why only specialists are needed for this job and fully competent.

In the previously mentioned case, the Ministry of State Administration and Local Government justified the announcement of such a procurement by the need to approach to the drafting and analysis of possible effects of changes in the Law on Political Parties in a comprehensive, expert manner - simultaneously from the point of view of theory and practice.This job must be done without any political pressures or prejudices, just with „ cold head and cold heart"[2]. Only the in-depth knowledge of law can be used to do this specific activity. Employees in the ministries do a lot of work every day and do not have the time to dedicate themselves equally

[1] This news was published on: https://www.blic.rs/vesti/politika/nevidjen-potez-novog-ministra-branko-ruzic-raspisao-tender-za-pisanje-zakona/lq47d0n. Accessed May 1, 2021.

[2] „How EU decisions are made", available on : https://europa.eu/european-union/eu-law/decision-making/procedures_en. Accessed May 1, 2021.

and completely to every one of them.They are usefull associates in process of writing the laws but it is obvious to us that they shouldn' t do this alone.

We may also ask: must the job of writing the laws be in the exclusive competence of the employees in the ministry or is it possible, either with occasional or constant support of an appropriate expert, to do so? Or, it would be possible to transfer the most resposible part of this to persons outside the ministry, and it may give more time to the ministry itself to focus only on the technical part of the procedure, which is no less important? We believe that this is possible - to move the process of lawmaking in the stated way, and in our work we will state the reasons why the professionalization of lawmaking would be extremely important.

We claim that the process of lawmaking is rather different from the process of voting for /enacting laws. Those two subjects- the writer of the law and those who vote for them, should be different, to make this specific activity well prepaired and well done in the end. We strongly believe that it is possible that the proposer of the law (ie ministry, for example) directly participates or writes the proposal itself, but again, according to our idea, this does not make any special equalization of these two roles. A writer of law is a person or persons who directly create the text of a law, based on the previously expressed wish of the client (any ministry, again as an example), with due respect to all relevant linguistic and logical rules, hierarchy and validity of previously adopted legal acts of all levels of legal force.The writer of the law should approach this role carefully, with solid knowledge of the legal system of the state in which they are writing the law, including the mentality, social and structural characteristics, as well as the value attitudes of the population in certain areas.

The process of lawmaking is very an incredibly deep, thoughtful, exploratory and analytical process, which implies a clearly defined goal to be achieved by a new general act, clearly and precisely defined stages of research. As well as the initial set research hypotheses, clearly defined methods of work (historical, comparative, analytical, and other methods), and finally clearly, precisely, and concisely present the results of research, work and reflection, in the form of a legal text. Our thoughts are far more complex than the linguistic apparatus in any language; therefore, the need for the accuracy of expressed thoughts is always present, sometimes to a greater or lesser extent. Of course, this does not mean that the achievement of linguistic perfectionism should be abandoned, but that constant efforts should only be made to improve it.

2. Special knowledge and skills that a good writer(s) of laws must have

In order to do a good job of writing a draft law, the writer of law must be *a good lawyer, with a good knowledge of the entire (domestic) legal system, including ratified international conventions* (which due to their direct application in the legal system without the obligation to pass a new law are often lost in sight of as relevant sources in domestic law).

The law is dynamic and in constant motion and change. With its dynamics, it affects the society and the relations in it, and *vice versa*. Adequate monitoring of the ubiquitous dynamics of regulations is an additional burden for the writer of law, because we must not allow ourselves to write something that already exists in the new draft. We must know what is the specific legal system consisted of, what kinds of solutions to some problems it has, and what are its basic principles on which we can rely while writing the law. We cannot say that something is new if its exists in legal system(and we are just saying that we didn't know it existed), and yet, we also cannot write or propose some solutions that are opposite to the principles and to the spirit of that legal system(for example , we cannot propose slavery again, when it is considered as inhuman practice in most of the systems in the world).[3]

Good knowledge of the law, especially in a certain area, is very important at the very beginning of writing a draft law, when it is necessary to determine the legal basis for the adoption of that regulation as well as the competent authority for its adoption. It is also important to systematize the provisions of substantive law before procedural ones, in accordance with the requirement to respect a certain structure of regulations.

Sometimes it is especially important to *obtain the consent of specific state body for writing the law and the content of a draft law*, when this is mandatory, and even when it is optional. It is something that goes more to the political than to legal area, but it is also rather important.Without those consents, the activity of writing the law could be useless. A skilled writer of law who is also a good lawyer will use their knowledge to prevent a possible conflict between several different bodies regarding the competence to pass an act, or to propose an act, and ensure the sustainability of the act they are writing. Otherwise, the draft law will be considered or not adopted by another equally competent state body - which slows down the process of change of legal system.Also, they would be competent enough to gain that kind of consent of specific state body, in a propair way and shape.

The writer of a law also must have a *good knowledge of the language in which the law is written*[4], *as well as knowledge of the legal terminology itself.* The words they use when writing a draft law must be modern enough and at the same time common enough and in everyday use so that the content of the commandment or law should be clear enough to any addressee, not only to those who have the appropriate knowledge in the field of law. The possibility of deviating from this everyday spoken language exists, but the same, according to the recommendations of both legal theorists and legal practitioners - should not be used too much.

[3] We must distinguish the legal basis, principles , from the immediate reason for creating that draft law, which is usually the protection of some value (life, health, family, etc.). The immediate reason for the emergence of a new regulation is subsumed under one of the already existing constitutional or legal principles - for which a special kind of linguistic, legal, logical and other mastery is necessary.

[4] Савић,С., Константиновић Вилић, С., Петрушић,Н.,(2006). Језик закона, карактеристике и родна преспективa, Мићовић Миодраг [ур.] *Право и језик*, зборник, Правни факултет, Универзитет у Крагујевцу, 55, 60.

Use of language in law should certainly be more precise than in everyday speech, and in connection with that, *the use of certain terms* must have a *single, unique and common meaning*, which achieves greater linguistic precision in itself . That is why this phase of drafting the law represents the biggest challenge for the writer of law himself/herself: because he/she needs to *create a legal expression, a rule that will be devoid of emotions, without sufficient words and explanations, rigid enough not to be misunderstood and yet flexible enough to be applied in an unlimited number of future cases*.This challenge is present latently during the entire law-making process, but it is especially pronounced at this stage, because all previous reflections and research take their first form for the first time, at this stage.

This is one of the most demanding parts of the law writing process. At the same time, respect for the simplicity, comprehensibility and choice of appropriate language constructions, combined with the logical correctness of what is written and the *moderate use of legal terminology*, represent a multiple effort[5] that must be done. The "excessive" use of professional terminology can lead to a kind of mystification of both law and the state, which may lead to an increased need for interpretation and understanding of what has already been written. Too much interpretation and misunderstanding of legal text can ruin or even change the true meaning of the original legal text[6]. "Exaggeration in the imposition of the legal form of reality can have a negative impact on the reality that the law translates into its own language, as well as on the law itself."[7].

When writer of law is a good linguist, he/she *masters the purity of language*, which is his/her basic tool for work and expression of thoughts, ie. legal norms[8]. Achieving linguistic precision and comprehensibility, all with the aim of preventing unclear, potentially deceptive and incomprehensible command to the addressees, which may ultimately lead to abuse and non-compliance with established legal norms is very important. The language of legal theory and the legal texts, is already dry and devoid of emotions. At the same time, it must be clear and adaptable enough to the usual vocabulary and understanding of language to the average reader of the text/average man. Clarity and intelligibility in legal text contributes to the greater legitimacy of the commandments themselves. People tend to refuse to listen to all that is unclear and incomprehensible to them in any way.

The language skills are especially needed when *there is the use of foreign words and phrases from other languages that are either not translated but transplanted into*

[5] "The language of lawyers and law has never been, nor will it ever be able to be completely precise and specific-Тасић,Ђ, (1995). *Увод у правне науке*, Београд, 112.

[6] Кауфман,А. (1998). О језичности и појмовности права, *Право и разумевање права*, 8.

[7] Митровић, Д. М . (2000). Техника стварања права, *Collection of papers: Стварање права*, Правни факултет Универзитета У Београду, *Србија-правна држава*, књига 43, Трећи скуп Југословенског удружења за теорију, филозофију и социологију права, Милочер, 89.

[8] Ћорић, Д., (2016). Трагом расправа о унификацији југословенског права, *Зборник радова Правног факултета* у Новом Саду, (4), 1408.

the legal system in transcribed form into Serbian language, or when the attempts of translation of a term or phrase from a foreign language with are made. Mutual influences with other languages, cultures, societies and legal systems are impossible to avoid. It is possible, we believe, with a little more effort, sometimes to find an adequate word in the serbian language and use it because of greater understanding and acceptance in our society[9]. For that we need a very skilled profession, fluent in both everyday , and professional languages- maternal and at least one foreign languages.

The requirements for a good knowledge of the law and knowledge of the language and its proper use are especially united in the part of the explanation of the draft law. The rationale itself must therefore contain the following elements:

„ (1) constitutional, ie legal basis for enactment of regulations;

2) reasons for enacting regulations, and within them especially: analysis of the current situation, problems that the regulation should solve, goals achieved by the regulation, considered possibilities to solve the problem without enacting regulations and answering the question why enacting regulations is the best way to solve problems;

3) explanation of basic legal institutes and individual solutions used in the text;

4) analysis of the effects of regulations, which contains the following explanations: when and how the solutions in the regulation will most likely affect, what costs the application of regulations will create for citizens and the economy (especially small and medium enterprises), whether the positive consequences justify the costs he will incur, whether the regulation supports the creation of new economic entities on the market and market competition, whether all interested parties have had the opportunity to comment on the regulation and what measures will be taken during the implementation of the regulation in order to achieve what is intended by the regulation;

5) assessment of financial resources required for the implementation of regulations;

6) general interest due to which retroactive effect is proposed, if the draft law contains provisions with retroactive effect;

7) reasons for passing the law by urgent procedure, if an urgent procedure has been proposed for passing the law;

8) the reasons for which it is proposed that the regulation enter into force before the eighth day from the day of its publication in the "Official Gazette of the Republic of Serbia;

9) an overview of the provisions of the valid regulation that are being amended or supplemented (it is prepared by crossing out the part of the text that is being

[9] Dabo-Denegri, Lj. (1998). Jezično posuđivanje: tipologija leksičkih posuđenica(anglicizmi u francuskom jeziku), FILOLOGIJA, 30-31, 439-450.

changed, and entering the new text in capital letters). "[10]

Also, the writer of law must have the skill of *predicting the possible effects of* the *new law*, or the specific mechanism of control of those effects that are introduced into an existing law. Determining these effects implies the overall impact on the entire population, or to the part of the population to which the new law or new mechanisms would apply[11]. It is very important to determine the economic and social effects of the future new law - whether and how much the new measure costs the state, and what are the benefits of investments invested in that change, what is the expected inflow into the state budget annually taking into account other relevant parameters. One of the most difficult effects to predict is how a perpetrator of law would react to specific kinds of punishments. Those predicitions include knowledge of psychology, sociology, criminology and other social sciences that are not very and directly linked to the law itself. But the dynamic structure and effects of law are possible and visible in all areas of life. A good writer of laws should all that have in mind.

3. Concluding remarks

In this short overview we tried to tackle some prioblems that the writers of laws have to deal with, while their specific impact and significance is not recognized as a special profession. We hope that this article will engage a lot of collegues to think about this issue, because it is very important to solve it in our communities. Law writers can sometimes have the destiny of the whole state and state's population in their hands and minds as well. If we recognize them as professionals, we can establish standards for their initial and advanced trainings, establish ways to evaluate their work and suggestions for their continuous improvement.

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[10] Јединствена методолошка правила за израду прописа. Article 59, available on : http://www.parlament.gov.rs/upload/documents/Jedinstvena%20metodoloska%20pravila%20za%20izradu%20propisa.pdf. Accessed on : May 1, 2021.

[11] For example, in the field of economy, special attention is paid to market competitiveness and enabling free market competition.

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