CHAMBERS OF PROFESSIONAL SERVICES AND EUROPEANISATION

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It is a well-known fact that exercising certain professions is a personal service closely connected with basic human rights, and at the same time the service itself is a high quality intellectual activity. Traditionally, the medical, pharmaceutical, and legal professions fall under such services, and auditing, architecture and engineering (or other expertise) followed to join the list in the 20th century. On the market of these services quality, reliability, the personal and professional competence of the suppliers and the special protection of the customers are important values that are safeguarded everywhere by multi-level guarantee systems.[1] The Chambers of Professional Services play a prominent role in these systems all over Europe.[2] Such chambers have always been special mediators between the professionals and the state being simultaneously public law formations and civilian organisations which can only fulfil their tasks if this delicate balance between their private and public features is upheld. Traditionally, these institutions are closely related to the national economy and the national state expressing the corporate interests of the professions exercised so far within the national framework. This frame, however, is being disintegrated even on the market of professional services and suppliers are increasingly becoming subjects of either the European or the World market.

A number of questions arise in a new perspective with regard to professional services and chambers which have so far seemed to be evident. The special character of these services has up to now been generally accepted which also justifies the large extent of regulation both from the part of the state and the chambers. Up to the present the primary issue in respect of the position of the chambers – especially in Hungary – has been their relations with the state, their

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1 These services are called 'professional services' in EU regulations, so we are going to use its Hungarian translation 'szakmai szolgáltatások' even though the Hungarian term does not fully give back the essence of these professions.

2 See in more detail: S. Berényi, *Az európai közigazgatási rendszerek intézményei (Autonómiák és önkormányzatok)/Institutions of European Administrative Systems (Autonomies and Self-Governments)*, (Rejtjel Kiadó, Budapest, 2003), particularly pp. 396-403.

autonomy versus the state whose guarantees have been continuously refined from a public law perspective. Currently, however, professional chambers are being attacked heavily from the side of the market complaining of their restrictive competition-distorting practice. In recent years the European Court of Justice has assessed the regulatory norms of the chambers from this point of view, and the first decisions have been made by the Hungarian Competition Authority which took the practice of the European Court of Justice into consideration in assessing the ethical regulations of the Hungarian professional chambers. EU-membership has substantially changed both the traditional characteristics of professional services and the operation of chambers fundamentally influencing their future. In order to analyse these changes the study discusses the reorganisation of the Hungarian Chambers of Professional Services, the role of chambers in 'public supervisory control' of the suppliers and their relations with the state.

I. Professions

1. Characteristics of professions

Common characteristic features of professional services:

- either the services themselves provide public welfare or they procure public benefit by their external effects, or by exercising rights relating to public benefit; thus the services are characterized by a certain involvement in public interest;
- in order to provide services outstanding professional knowledge, special expertise is required, the mastering of which necessitates a long term training, and its maintenance continuous study, and further training;
- the services themselves represent high quality intellectual activity;
- deriving from the fact that expertise is required for these services they are person-related, demanding personal performance which often also entails the requirement of independence or impartiality;
- arising from the person related services and the requirement of independence practitioners of these professions have had private practices forming special partnerships for a long time even up to the present;
- it is also related to the special expertise that in case of such services customers/clients/patients etc. in comparison with usual market services know essentially much less of the quality markers of the specific services; therefore, a great extent of 'information asymmetry' characterizes the relationship of the client and the service provider;

- the connection to fundamental human rights and public benefit, as well as 'information asymmetry' altogether necessitate special quality requirements towards service providers, and checking the compliance with such standards requires the same level of expertise as that of the service provider;
- services are often confidential which apart from person related performance, demands a special treatment of data and information, as well as the protection and guarding of secrets.[3]

As a result of such characteristics, traditionally, professional services have a strong regulatory framework on the market which consists partly of statutory provisions governing some of the rules of the profession, partly of the intervention of the authorities by influencing the launching of the business on the market (e.g. licensing, issuing permits), or the possibility of offering services (continuous supervision by the authorities), and apart from these civil law liability sanctions (e.g. imposing fines, temporary suspension of a practice, revocation of licences etc.) are also imposed by the authorities in case of violating professional rules, or providing defective services.[4]

The other institution of the system of guarantees in continental jurisdictions is the chamber as a public body; it organizes practitioners of certain professions through compulsory registered membership, and within a peculiar self-governing system – in lieu of and beside the state authority – exercising professional self-regulation, control and calling members into account.

[3] With reference to the activities of advocates see: 'Az első ügyvédi rendtartás megalkotásának 125. évfordulója', the lecture of Dr Jenő Horváth at the festive session of the Hungarian Bar Association on 16 June, 2000, *Ügyvédek Lapja* (2000) 3 pp. 3-4; furthermore A. Degré, 'Ügyvédképzés Magyarországon a polgári korban', *Jogtörténeti Szemle* (2006) 3 pp. 15-22.

[4] State intervention may have several different functions – depending on historical periods. Apart from the ones mentioned above regarding the practitioners of these professions as by influencing and directing intellectual life they may well form and even represent political intentions, and personally or through their professional bodies may play an active role in exercising political power or in a campaign striving for it. However, examining this issue does not fall within the scope of this present study, thus I shall not discuss it. For bibliography on this topic see Autonómiák Magyarországon */Autonomies in Hungary/* (2004); Mária M. Kovács, *Liberalizmus, radikalizmus, antiszemitizmus (A magyar orvosi, ügyvédi és mérnöki kar politikája 1867 és 1945 között)/ Liberalism, Radicalism, Antisemitism (ThePolicy of the Bar and that of the Doctors and Engineers Between 1867 and 1945)/* (Helikon Kiadó 2001)

2. A concise history of the Hungarian professional chambers

In Hungary the first professional chambers to be established by statute[5] were the Bar Association and the Chamber of Civil Law Notaries. This was followed by the formation of the Chamber of Engineers[6], then in 1936 the setting up of the Chamber of Medical Doctors.[7] The enactment of the laws on the Chamber of the Press and that of the Arts by the end of the 1930s – of which, practically, only the Chamber of the Press was formed and operated[8] - was partly relating to the laws regarding Jews, partly to the intention of exercising closer state control over the press and the arts.

After 1945 public bodies which had been openly fascist or fascist like were dissolved, and so were organizations that had been closely linked to the former regime politically, such as the Chamber of Medical Doctors and that of the Press, and the Knightly Order of Vitéz. In 1949 by rendering civil law notaries civil servants of the state the Chamber of Civil Law Notaries was practically abolished.[9] In 1949 by the enactment of the constitution the chamber as a form of public body was removed from the institutional system governed by statute, and was taken over by the comprehensive category of 'social organization'; thus, the Bar Association, which was the sole professional organization that remained, also operated as a social organization.

Following the time of transition the restoration of the legal status of the chambers as public bodies first arose in the case of the Bar Association and the Chamber of the Civil Law Notaries in 1991. At this time, however, as no such institutional forms existed statutory regulation provided for the right to self-government for advocates and civil law notaries and its institutional forms, also bringing back the term 'chamber' on every level of self-government.[10] In 1991 and 1992 preparations were started to establish the Chamber of Medical Doctors, then the Chamber of Pharmacists as public bodies.

The public body as a type of organ was reintroduced in the Hungarian legal system by the amendment of the Civil Code (C.C.) of 1993[11] following an interval of nearly forty years.

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5 See Act XXXIV of 1874 on rules of counsel, and Act XXXV of 1874 on royal civil notaries

6 Act XVII of 1923 on rules of engineers

7 Act I of 1936 on rules of medical doctors

8 Act XV of 1938 on providing a more effective balance of social and economic life, and Act XIX of 1940 on establishing arts chambers and their organisation

9 Government Decree No. 4090/1949. (VI.14.) on reorganizing the status of civil law notaries into civil servants

10 See Act 4 of 1983 on lawyers as amended by Act XXII of 1991, Sections 31 and 40, and the text when promulgated Sections 13-15, 38 and 53 of Act XLI of 1991 on civil law notaries

11 Act XCII of 1993 on certain amendments of the Civil Code

In the reorganization of the professional chambers several intents and aims were met.

- From 1990 prior to the amendment of the C.C. an ever growing need arose – primarily among the practitioners of 'free intellectual' professionals – to form some kind of 'guild-like' type of institution which could exercise professional control more dominantly than the former social organizations representing professional interests, and they were repeatedly referring to the chambers operating as public bodies between the two world wars. The main motivation was a more efficient assertion of interests against state organs. The chamber as a public body exercises executive power towards its members by compulsory membership and by performing public duties, at the same time it asserts and protects the interests of its members representing the corporate interests of the profession towards the state. The weight and possibilities of assertion and representation of interests are apparently far greater if the body may act on behalf of every member of a certain profession.
- The endeavours of each profession met the intentions of the political power. From the part of the state one of the political goals of establishing professional chambers was to foster decentralization of the uniform state power together with having the local governments set up according to regions. On the other hand, decentralization of 'public duties' also aimed at discharging the national budget.[12] In specialized literature on public law many greeted the appearance of public bodies as the empowering of civil society.[13]

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[12] This aim was formulated in the reasons given for the amendment of the Civil Code in the following way:
'State power has dominated all the resources of civil society in the past decades. It had partly also "nationalized" the classical non-profit sphere (such activities and institutions), and accordingly a centralized distributive system prevailed, and partly it did not provide the conditions which – being underdeveloped in our country anyway – could have been necessary for the thriving of the non-professional or third sector. The changes in society, steps towards social market economy and the gradual democratization of public life established the possibility for the forming and the autonomous development of civil society. It also became apparent that a remarkable quantity of public duties cannot be or not efficiently performed through the organs of the state or self-government. However, it is not compatible with the nature of public duties to provide for them directly and exclusively on business grounds.
The change that occurred in the role of the state in carrying out public duties absolutely necessitates basic non-profit organisations serving public duties which integrated within the state and civil sphere may play a dominant role in providing public services, or in organizing such, and providing for a part of public duties independently from the state. These organisations … could help in breaking down the state forms of the non-profit institutional system and help civil society in playing a more prominent role in such a way that – in spite of the decrease of financial resources of the state – they may open up better opportunities in providing services of a higher standard in the performance of public duties.'

[13] e.g. F. Kondorosi, 'Kell-e nekünk civil társadalom?'/Is There a Need for Civil Society?/, *Magyar Közigazgatás* (1995) 5 pp. 271-276.

- An expressed or implied aim of organizing professionals in different chambers formulated by various professional interest groups was restricting the market; that is, the launching of a practice on the market which bears an impact on the expansion of a range of professions should be subordinated to the authority of the chambers. The representatives of different professions attained diverse results depending on how successful the assertion of their interests during the preparatory work of drafting the statute on their particular chamber was. The most severe market control is exercised in the profession of civil law notaries where the number of notaries on the market is regulated by statute, and appointments are made under the authority of the Minister of Justice. Veterinary surgeons are permitted to enter the market by the chamber, as for the advocates, architects, engineers and auditors the market is nearly 'free' as compulsory registered membership is the sole criterion. As far as professions in the health care sector are concerned, enterprises are allowed to function by permits issued under the authority of the Ministry of Health – excepting the short-lived licensing authority of the Chamber of Pharmacists.
- In respect of most professional chambers the legitimacy of this market-restricting role is based on the aforementioned special character of the professions and the need of a corresponding public supervisory control. Certainly, the regulatory and supervising functions could be carried out through a form of association, however in that case the regulations and the enforcement of norms would lack the legal aspect; as a norm within an association is a matter of consensus among the members, the violation of a norm would merely ensue the resentment of the others or the exclusion of the member being in violation of that norm for the most. On the contrary, the essence of chambers operating as public bodies is that executive power is vested in such bodies by the legislator to enforce regulations and professional rules, thus entrusting the regulatory, supervisory and sanctioning functions of the state to the self-management of the members, creating a self-government of public law nature constituted of the specific professionals.

In establishing professional chambers the question arising is for which professions it is necessary and at the same time possible to form and enforce professional rules in this way. Regarding *necessity* two aspects may play a role: it is only necessary for those professions where the state would at all events require an official licence for operation, i.e. for those where increased state control is of public interest. The other aspect is that the practitioners of such professions typically do not work as employees, so they are also out of any employers'

control and the chamber is the one that is qualified to remedy the lack of such supervision.[14]

Self-government is a *possibility* if the right persons having a profound knowledge of the professional rules are available for self-management. All such professions operate in line with a complex system of norms, in which establishing and supervising the observance of such standards requires as much expertise from the person exercising supervisory authority as from the practitioners of the profession.

The question also arose several times from a constitutional point of view when action was brought against the regulations of professional chambers prescribing compulsory registered membership to the Constitutional Court. The constitutional objections were formulated mainly in two areas in the petitions. Firstly, that establishing public bodies by statute violates the constitutional right of association. The Constitutional Court has definitely held in several decisions since 1994 that public bodies are not formed on the basis of the freedom of association. [15] Secondly, that prescribing compulsory registered membership in order to practice a profession violates the constitutional right of launching en-

[14] This aspect is not present in every chamber, as e.g. one of the earliest professional chambers, the majority of the members of the Chamber of Medical Doctors is employed as a civil servant even today. For the same reason the legitimacy of the Hungarian Chamber of Ancillary Workers in Health Care was called into question for a long period of time where members – partly because of their position in medical treatment – do not become self-employed even on long term, but remain in some kind of employee status.

[15] The Constitutional Court stated its opinion on public bodies with reference to bar associations in its judgement numbered 22/1994. (IV.16) AB. The position taken by the Constitutional Court – as its ruling is referring to it – agrees with the opinion of the European Court of Human Rights.
'The Constitutional Court states that public bodies, professional chambers may be constitutionally established by virtue of the law and prescribe compulsory registered membership to provide for public duties and pursuing activity of a public interest. Public bodies are not formed under the freedom of association, and compulsory registered membership does not violate under such freedom the right of joining an association voluntarily.'
The opinion of the Constitutional Court in this respect agrees with that of the European Court of Human Rights. Accordingly, in case of compulsory registered membership with regard to professional chambers no violation of the freedom of association occurs by virtue of Article 11 of the European Convention on Human Rights.
'The chamber of doctors is a public law institution formed by statute and integrated into the state system; the chamber exercises public supervisory control with respect to medical practice and bears considerable entitlements. With reference to all this the chamber cannot be deemed an association. … The chamber and what it necessitates (compulsory registered membership), and the fact of being subordinated to its organs does not in any respect – either in subject or consequences – interfere with the freedom of association.' (ruling held in the case of Van Leuven and de Meiere on 23 June 1981) [Constitutional Court ruling No 22/1994 (IV.16)]. Essentially, the petitions against the rules of public bodies were dismissed on the same grounds in the Constitutional Court ruling No. 1283/B/1995.

terprises freely, and the freedom of choice in selecting a job or occupation. With regard to this issue, the Constitutional Court applied the 'necessity – proportionality test' in all cases, i.e. whether it is necessary to restrict a right in order to protect another fundamental right, and whether this restriction is proportionate as to the protection of such right. The Constitutional Court provided an answer to this question by thoroughly examining the characteristics of each profession (activity) from case to case. In respect of advocates, because of their role played in the legal protection of rights, and regarding medical doctors, because of the role medical treatment plays in providing for the fundamental right to life and good health the Constitutional Court dismissed the cases rejecting the arguments of the petitions against compulsory registered membership of the chambers.[16] However, the regulation of the chambers of hunters failed this test on the grounds that the Constitutional Court did not find it constitutionally justified to claim compulsory membership from non-professional hunters (sport hunters).[17]

Subsequent to the institutionalization of public bodies as a form of organization a dominant expansion took place among the professional chambers. Up to the present, 16 professional chambers, and organizational systems of chambers have been established, and from time to time new professions submit their application to create one.[18]

II. Rules of 'public supervisory control' of the chambers

1. Membership as the legal relationship forming the basis of the regulatory function of the chambers

A common characteristic of professional chambers is the requirement of compulsory registered membership,[19] which may be statutory (see civil law notaries, independent bailiffs), while in most chambers admission of members is based on individual discretion. The regulatory framework of membership is

[16] See rulings of the Constitutional Court already referred to: 22/1994. (IV.16) AB and 39/1997. (VII.1.) AB

[17] Constitutional Court ruling No. 41/2001. (X.11) quashed Subsection 1 of Section 14 of Act XLVI of 1997 on the Hungarian Chamber of Hunters.

[18] The need for creating a chamber was formulated from the part of e.g. actors, translators-interpreters, and psychiatrists.

[19] Up to the end of 2006 compulsory membership generally prevailed over those exercising a particular profession as a vocation. At the end of 2006 compulsory membership as to chambers operating within the health care sector was quashed, and as a logical consequence the reorganized chambers have only been allowed to exercise their professional/ethical supervisory control over those members who registered voluntarily. With regard to others working in this sector, the state 'took back' the right of regulation and calling into account, and to this effect set up a structure (Act XCVII of 2006 on professional chambers operating within the health care sector)

laid down in the various laws of the chambers reflecting the dual legal nature of public bodies. A part of the regulation is similar to that of an association: it specifies the rights of participation (right to vote and be elected to an office in the chamber, participation in decision making regarding the chamber, making proposals, right of expressing opinion, using chamber facilities, etc.), and the obligations deriving from membership (e.g. paying membership fees, complying with chambers regulations).

The other scope of regulating membership corresponds to the fundamental public function of chambers, i.e. the professional control of members and their accountability on ethical or disciplinary grounds. The amendment of the C.C. institutionalizing public bodies defines their aim and raison d'etre in that they are legal entities established by virtue of the Act 'performing public duties related to their membership and/or the activities performed by their members, …have the authorization, conferred on them by law, to fulfil public duties, and they shall exercise such rights through self-management.'[20] The statute does not specify what should be understood under 'public duties'; they differ depending on the type of public body. The primary 'public duty' of professional chambers – as ruled by the Constitutional Court in the aforementioned decision of 22/1994 (IV.16.) AB based on the judgment of the European Court of Human Rights – is to exercise 'public supervisory control' over the practitioners of a particular profession.

2. Separation of the spheres of authority between statutory and chamber regulation

All professions practiced by their practitioners are governed by detailed statutory provisions. Such provisions provide for:

- prerequisites of practising the profession (qualifications, special examinations, time of experience)
- conditions of launching a practice on the market (personal and material conditions of the service the availability of which is checked and warranted by the authorities or organs of the professional chamber before granting an operating permit)
- rules governing the practice of and the service provided by the profession (defining general requirements, prescribing professional procedures, determining quality requirements, special regulations for certain activity groups, etc.)
- consequences of violating professional rules, which may fall under special civil (liable for damages) or even criminal liability.

[20] Subsection 3 of Section 65 of the Civil Code

All this encompasses the laws on professional chambers and provides a basis for their regulatory framework. The laws on professional chambers are limited in scope as far as regulations of chambers go. These statutes aim at distinguishing between statutory and chambers regulations, at determining the regulatory competence of chambers, and at strengthening the law enforcement aspect of chambers specifying their scope of duty and authority. Legislation on chambers – among others – confers legislative power upon chambers to pass ethical/disciplinary rules. In this respect the regulatory right of chambers is rather wide in scope as laws on chambers – apart from some minor exceptions – only refer to some issues on guarantee: organizational requirements are established of asserting liability (forming a special organ of chamber: ethical/disciplinary committee), the behaviour which may be called into account is described, possible sanctions are listed, and certain procedural norms are prescribed.

3. The personal scope of chamber regulation

As I have mentioned before, the majority of professional chambers are compulsorily corporate bodies which provide strictly person-related services where practitioners are often *self-employed* as such. Considering an overview of Hungarian legislation it seems that with respect to these professions supervision and accountability exercised by chambers remedy a deficiency, namely the lack of an employer's disciplinary powers. It is well known that in the area of the private sector the employer's disciplinary powers are no longer acknowledged by statutes in labour law; however, they were retained in the public sector in employment relations of civil servants and others working in that sector. The element of public interest relevant in these professions lies in the background of being responsible for calling into account self-employed practitioners in the examined professions. In their case the general state supervision exercised over sole traders and corporations is not sufficient. The risk of deficient services is far too high to leave them solely at the mechanisms of a self-regulating market, as these mechanisms in the particular professions do not function at all or only in a restricted (distorted) manner. So other forms of liability present in the legal system are also inadequate for those who make use of these services or are related to them. These usually denote subsequent reparations or repressions. The standard is either a reasonable standard of behaviour or – as in the case of criminal law – they can only be applicable in the event of a glaring offence as a last resort. As these professions are closely related to fundamental rights and public interest, it is paramount that further forms of liability are to be institutionalized with due care, to provide continuous inspection and enforce liability with respect to the personal services offered.

This professional supervision may be carried out solely through public administrative control, but because of the need of highly qualified experts, 'public supervisory control' is rather costly, it is difficult to bar personal relationships between supervisors and those to be supervised, and the recognition of such outer control is also quite low.[21]

Professional chambers are not comprised solely of self-employed members. On the one hand, in certain professions those intending to practice such a profession (candidates) spend their traineeship as members of the particular chamber, and in several professions in order to substitute the self-employed practitioner in personal work the post of a deputy has been created. Other chambers do not only consist of self-employed practitioners, but *employees* are also present, and even civil servants may be members (e.g. chambers in the field of health care, in engineering, plant protecting engineering, the chamber of hunters). Besides, undertaking employment as employees is becoming widespread for representatives of some professions (e.g. advocates) where previously self-employment was prevailing. In case of compulsory registered membership chamber regulation also applies to these groups.

A key characteristic feature of the professions had been from the beginning of their existence up to the last third of the 20th century that they were organized within a national framework, and chambers in a number of countries had had functions of protecting their domestic markets in the field of their professional services; at least chambers have always been striving for it. In Europe these endeavours are slowly being cut down in the due course of European political and economic integration; today the free movement of persons (service providers) relating to professions operating in the EU member states is a requirement just as that of any other employees.[22]

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[21] This dilemma can easily be discerned in the health care sector. As I have already mentioned, the new statute on chambers repealed compulsory membership in respect of chambers operating within the health care sector. At the same time ethical liability cannot be removed in this area, thus the legislator doubled the organizational system in charge of enforcing ethical liability: over those members who voluntarily register at a chamber this authority is still exercised by the organs of chamber themselves, whereas over non-members ethical councils do; such organisations are independent in their procedure and were established under the auspices of the National Public Health and Medical Officer Service by the delegation of various professional organisations, constituted by doctors, pharmacists and others working in health care. See Section 28 of Act XCII of 2006 amending and supplementing the Health Care Act with reference to professional services operating within health care.

[22] The basis for it was established by Articles 52-58 (43-48) of the Treaty of Rome, but real possibility was created by the mutual acknowledgement of degrees. The most recent bibliography on this is K. Miklós, *Egység és sokféleség /Unity and diversity/*; 'Az Európai Unió hatása a kultúrára'/The Impact of the EU on Culture/ *Új Ember* (Budapest, 2007), Chapter 6 pp. 136-147, and on lawyers in more detail: Chapter 7 pp. 147-168.

Consequently, a new area of regulation arose in the statutory provisions on chambers to settle the operation of certain professions in Hungary which were originally practised in a state of the European Economic Space and determining their professional relationship with the Hungarian professional chambers. According to one of the solutions, practitioners having a registered office in Hungary and providing services therein or being in legal relations with such office would have to become registered members; in case of voluntary membership they may join the chamber (see chambers of health care). In other professions – pursuant to EU regulations[23] – the *foreign* practitioner coming from a member state of the EU remains the member of his/her country's chamber, he/she is only required to register at the Hungarian chamber to carry on his/her practice in Hungary (advocates, auditors). Professional regulations of chambers are also applicable to these practitioners, in the case of calling into account the two chambers would cooperate.

4. Types of conduct governed under professional chamber regulation

Rules and regulations of professional chambers govern professional conduct (usually ethical/disciplinary) but regulate a similar system of relations though with varying detail.

- all regulation under their general provisions defines the conduct expected from its members, general norms determining their everyday lives and the practice of their profession, namely proficiency, trustworthiness, respectable behaviour pertaining to the profession, and lawfulness are among the most frequent requirements.
- Independence, impartiality, confidentiality also pertain to most professions as requirements. These regulations also govern the rules of incompatibility and confidentiality in detail. The rules of practicing a profession are usually laid down among those provisions which regulate the relations with the clients.
- The regulations always provide for the relationships between the practitioners of a profession where emphasis on the spirit of fellowship is a common feature, and so is the strong protection of the fairness of competition.
- Some regulations provide for fees. Compulsory fees are not prescribed – chambers do not have any competence in the matter and rules on competition would not allow such prescription anyway – but it was expected in several places that for the sake of gaining markets members should not lower their fees below what is recommended by the chamber

[23] With reference to lawyers see directive 98/5/EK of the European Parliament and Council accepted in February 1998.

(e.g. previous ethical code of the Chamber of Auditors, disciplinary code of the Chambers of Patent Agents).

- Also relating to the business activity of members, almost every regulation refers to the advertising and publicity activities of members. Similarly to the fees policy, there is no prohibition of advertising and publicity, but chamber regulations restate and emphasize the inhibitions laid down in the Act on economic publicity (e.g. prohibiting fraudulent self-boasting, comparative commercials discrediting the competitors). There are also specific inhibitions relating to particular professions, e.g. prohibiting boasting with influence (advocates, auditors), prohibiting peddling (veterinarian surgeons), for the latter even the types and the size of advertising notice boards were prescribed.
- Those chambers which have a regular relationship with state organs have a special chapter in their ethical/disciplinary regulations corresponding to the relations with the authorities.
- Finally, every regulation provides for the relation between the members and the chamber, focusing primarily on the obligations deriving from a member's holding an office at the chamber.

The regulatory authority of chambers is not only to cover prescribing the expected reasonable conduct, but also to defining infringement, specifying available sanctions, appointing organs of chamber to call into account and prescribing ethical/disciplinary procedural rules.

III. Constitutional problems of the professional regulation of chambers

Certain constitutional problems arise from the abovementioned wide range of authority regarding the self-regulatory aspect of chambers. Doubts are cast deriving from the characteristic feature of chambers as public bodies, regarding their legal status, organisation, and operation, acting in a dual capacity of exercising civil and state functions simultaneously. This dual capacity places chambers in a mediator's role between the state administrative organs and civil organizations, endowing them with a peculiar political content.[24] From the part of the state, the public body as a form safeguards the integrity of the particular social group, and provides the opportunity of a more powerful state control in contrast with the different kinds of associations. The dual capacity of public

[24] See on the same topic A. Ádám, 'A köztestületek és a közjogi szerződések a posztmodern társadalom és állam kapcsolatában'/ Public bodies and Public Law Agreements in the Relation between Post-Modern Society and the State /, *Acta Humana* (1995) No. 21, especially pp. 25-26.

bodies gives a strong hold of legitimacy for those groups which act as executives in public bodies and for the state as well. The relative independence from the hierarchy of state administration and the participation of those involved in exercising state authority gives the impression that public administrative decisions made by public bodies are impartial and professionally more deeply grounded. Therefore, both the organisational structure and the decision making mechanism point to the possibility of democratic legitimacy, but because of the risk of expropriating this executive power it might also entail the danger of monopolistic power of certain interest groups.

This latter danger may only be moderated if appropriate state control is exercised over public bodies which control in due course is capable of protecting members of chambers as against the organs of the chamber proper. In determining which organs would exercise state control and specifying their entitlements the – previously emphasized – "dual capacity" of chambers must naturally be taken into account since exaggerated state supervision by restricting autonomy and self-governance, or by depriving the chambers of these might abolish the "mediating" role of these public bodies.

The attitude of chambers regarding state control is rather ambiguous. The aim in the fights on the entitlements of state supervision over the chambers is to attain minimum dependence and maximum freedom; whereas the interest group or groups dominating within a public body strive for total monopolistic power over the other members of the profession. If we consider the regulatory authority of chambers from the perspective of this delicate balance, then the most severe problem does not lie in the wide scope of authority, but in the deficiency, even lack of outer control.

It is the state control over local governments that constitutes the regulatory model for the state supervision to be exercised over professional chambers. Entitlements of state supervision are divided among the different powers of the state in the case of chambers as well: continuous legal supervision[25] is vested in the Minister of the particular sector; however, he/she does not have the right to take measures, he/she may merely initiate proceedings against unlawful decisions of a chamber, or motion to review its operation. The court overrides the unlawful decision and may appoint a supervisory receiver in some chambers if the lawful operation is otherwise not guaranteed.

This model worked out for local governments is contentious on a number of points, regarding them and in adopting it to public bodies brings about serious deficiencies, especially relating to the regulatory authority of chambers. The law provides for efficient control over unlawful local government decrees as

[25] denoting whether an activity or decision is lawful or not

their supervision – like that of all other legal provisions - falls under the jurisdiction of the Constitutional Court. The regulations of public bodies do not amount to statutory instruments; hence the control of the Constitutional Court is not applicable here, but judicial review subsequent to legal supervision is the only means of control just as in the case of other acts of public bodies. However, if the rules on judicial control are examined it is clear that they are not suitable to overrule legal standards.[26]

Constitutional doubts are further enhanced by the fact that chamber regulations theoretically only apply to their members, but in a number of issues these regulations indirectly or even directly affect those 'consumers' (i.e. clients) who order their services (e.g. rules on fees, prescriptions on advertising and publicity). This outer impact also highlights the necessity of state control over chamber regulation.

IV. Rules and regulations of chambers as the decision of 'the association of enterprises'?

1. The chambers as market regulating factors

When listing the areas of professional regulation of chambers it could be noticed that chambers also determine some norms regarding the economic interest, and norms governing the entrepreneurial behaviour of their members. This regulation is especially frequent in two areas: advertising the enterprises of members, recommending minimum fees, and if any member would go below that it would amount to an ethical/disciplinary offence. Beside, some other areas may occur such as specifying conditions of launching a business on the market, or emphasizing the prohibition of unfair competition among the members.

Another entitlement of professional chambers, which has already been mentioned, regulating the market is the licensing of members' businesses – and this is in fact qualified as a "public duty" in the laws on chambers –, and contributing in acquiring state permits, i.e. bearing an impact on the launching of new enterprises.

[26] It is of no relief that problems with regard to supervision of public body regulation are similar to the judicial review of normative decrees passed by self-governments. In the case of public bodies it further complicates the situation that here regulation itself is contradictory. Rules of administrative procedure are applicable to judicial review exercised within the sphere of state control as in the majority of public bodies, whereas for chambers operating under the auspices of judicature, and in the case of the chamber of auditors general rules of civil procedure are applicable to court procedure. In more detail on the problems of state supervision over public bodies see Dr Marianna Fazekas, 'A köztestületek szabályozásának egyes kérdései' /Certain Issues of Public body Regulation/, *Magyar Közigazgatás* (2006) 6 pp. 328-329

With respect to our topic the role of professional norms in regulating the market deserves interest. With reference to this the following questions arise:

- to what extent do the characteristics of services offered by members of the professions alter the market relations of the service provider and the consumer compared to other services?
- to what extent do these markets require special regulation due to the public interest aspect of these services and/or to their external effects?
- if the necessity of a special regulation is justified, then who should carry it out, in what way and to what extent?

In the era of professional chambers operating within a purely national framework answers given to these questions were relatively unambiguous. The differing characteristics of these professions and services from typical features of market services had always been acknowledged. Professions gained a 'historical' right to special professional regulation in a number of countries, as we have seen in Hungary as well. It was natural then that when in the first half of the nineties chambers in the form of public bodies were revived they tended to vindicate a wide scope of regulatory authority to themselves from the legislative power of the state.

It is plain from the facts mentioned above that by the accession to the EU substantial changes have taken place on the market of these services as well. Partly due to the free movement of capital and workforce businesses having a seat or interest abroad, and foreign owners, but operating in Hungary (as well) appeared on the market of these professions; thus all prohibitions and restrictions have had to be abolished which previously retained the right of offering such services within a national framework.[27] On the other hand, the market of these services has become part of the inner market of the EU; thus EU norms are just as relevant and applicable on these markets as for similar services in any member state.

2. Opinion on professional services in the EU[28]

A review of the market of services – for the sake of extending global competition – was claimed necessary in various international organisations and forums from the nineties; thus, it was an essential element of the regulatory reform programme of the OECD in 1995. The aim was to keep state intervention at a

[27] See in more detail on Bar Associations, M. Király, i.m. pp. 158-165.

[28] On the opinion of the European Commission see in more detail: 'A Gazdasági Versenyhivatal ajánlása a közjegyzői szolgáltatások szabályozásának felülvizsgálatára' /Recommendation of the Economic Competition Office on supervision of the regulation of services of civil law notaries/ (hereinafter ECO study)
http://www.gvh.hu/domain2/files/modules/module25/pdf/print_3877_h.pdf

minimum level, which may be undertaken by deregulation and by letting market competition and self-regulation develop in a growing extent. This process has had an impact on the markets of professions and their services. The EU briefly touched upon 'professional services' in the Lisbon Strategy, regarding their role crucial in improving European economic competitiveness. Subsequently, the Commission issued a report in 2002 on the inner market of these services, then in 2003 commissioned by the Directorate-General for Competition of the Commission the Institute for Advanced Studies seated in Vienna submitted an analysis on the regulation of professional services covering the EU 15.[29] The analysis encompassed the following professions: advocates, civil law notaries, accountants, engineers, architects, and pharmacists. Integrating the study the commission issued a Communication on professional services from a competition law perspective in February 2004.[30] According to the Commission the rules and regulations of professional services serve to provide quality, proficiency and enhance the trust of clients, and eliminate the problems of market competition.

However, the Commission deemed competition disproportionately restricted in certain issues relating to the self-regulatory practice of chambers. In view of the Commission's standard professional regulation is proportionate if it serves a well defined pubic interest and does not involve a greater extent of restriction than absolutely necessary. Regulations restricting competition normally appear in the following areas: rules on compulsory or recommended fees, limiting advertising, bars to launching a business on the market, organizational questions of the activity, and corresponding disciplinary procedures. The Commission called for the attention of member states to review these regulations, and specifically called upon the national competition authorities to pay attention to the regulatory endeavours of professional chambers. The Commission extended this investigation to the 10 newly acceded member states in 2004, and published a report based on the findings in November 2004. This report revealed a similar situation to that in the older member states. The most strongly regulated professions are those of the civil law notaries and of the pharmacists, the legal professions are average on this scale, and engineering professions are the most liberally regulated. The profession of auditors, nevertheless, is essentially more liberally regulated in the new member states than in the old ones.[31]

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[29] 'Economic impact of regulation in the field of liberal professions in different Member States – Regulation of professional services' Institute for Advanced Studies, Vienna, 2003. Quoted by: ECO study p. 13.

[30] Communcation from the Commission; Report on Competition in Professional Services (Brussels, 9 February 2004, COM (2004) 83Quoted by: ECO study 14.

[31] For a detailed study on the analysis and the Communication of the Commission see: A. Pünkösty, 'A szakmai kamarák tevékenységének megítélése a közösségi és a magyar versenyjog-

From the Communication of the Commission regarding the basic issues the following conclusion may be drawn: the market of professional services is truly endowed by particular characteristics which may cause problems on the market. In order to eliminate these certain norms may be established, regulation may even be conferred on professional chambers, but all such regulation needs to be assessed from a competition law perspective taking into consideration whether such regulation is reasonable and proportionate.

3. The chambers' rules and regulations of professional conduct in competition law cases

The competition boards of the Economic Competition Office (ECO) passed more than a dozen resolutions/ruled more than a dozen times against various professional chambers in which diverse points of their ethical/disciplinary regulation were held to be 'agreements reached by an association of enterprises restricting competition' inhibiting the chambers from applying these points, and imposing a fine in certain cases. The legal grounds for proceedings up to the accession consisted of the provisions pertaining to the scope of organs and objects of Act LVII of 1996 on unfair market practices and prohibition of restricting competition (Unfair Market Competition Act: UMCA), and Section 11 inhibiting agreements restricting economic competition. This latter also lists the "decisions of public bodies" among the possible agreements on restricting competition.[32] Since accession has taken place beside the UMCA the ECO is also obliged to apply the competition law norms of the EU.

In proceedings of competition supervision provisions pertaining to advertising and recommended minimum fees of the ethical/disciplinary regulations were ruled as restricting competition. In such proceedings questions of several principles arose which were answered in a generalized manner in the specific decisions. One such question was whether the jurisdiction of ECO is extended to the particular service, and hence to the regulation of chambers. The competition board examined in relation to the ethical code of the Hungarian Chambers of Medical Doctors whether health care services qualify as economic services and whether they fall under the concept of 'enterprise' listed under the scope of

ban' /Opinions on the Activities of Professional Chambers in EU and Hungarian Competition Law/. The study won 1st prize in 2006 on the competititon of ECO. http://www.gvh.hu/ /domain2/files/modules/module25/pdf/print_4448_h.pdf

[32] UMCA Section 11 Subsection 1: Agreements among enterprises and harmonized practices, as well as decisions (hereinafter altogether 'agreement') made by social organisations of these enterprises, public bodies, associations and other similar organisations which aim at hindering, restricting or distorting economic competition, or may bear or bear such impact are prohibited. The agreement does not amount to as such in the event it is reached among enterprises which are not independent of each other.

objects of the UMC, and whether the chamber may be defined as an 'association of enterprises'. The competition authority explicitly condemned the ethical rules of the medical chamber on the limitation of advertising, and expressed that service providers in the health care sector – regardless of their legal status – are to be considered enterprises from the perspective of competition law. Furthermore, it stated that the regulation of public bodies in this respect is the agreement of 'the enterprises constituting the association' which – similarly to other agreements of enterprises – may not hinder, infringe upon or distort market competition.[33]

This ruling of the competition authority with respect to its own jurisdiction is binding upon the regulations of other chambers. With reference to other professions the chambers did not contest the fact of qualifying their practice and services a business activity, however, defining a chamber as an 'association of enterprises' was questioned as well. This problem touched upon the essence of public bodies. It is obvious that the UMC and on this basis the ECO make no distinctions between public bodies which are public law legal entities based on compulsory registered membership, established on statutory terms, and private law associations, social organizations, and other entrepreneurial partnerships, mergers from the view of competition law.

This issue sharpened following the accession in competition board decisions based on the practice of the European Court of Justice and EU competition law. Those two rulings [34]amount to precedents in Hungarian cartel law which were based on the decisions of the European Court of Justice relating to the inspection of chamber regulation and which took a stand on the state authority features of chamber regulation. The question first arose in respect of the disciplinary regulation of the Hungarian Bar Association; later the same question was raised in connection with the ethical regulation of the Hungarian Chamber of Auditors in course of proceedings of competition supervision. In both cases the competition authorities objected to certain points on advertising. Chambers argued among others that the Act on professional chambers confers regulatory rights upon them, which creates an obligation as well. Regulation is such a 'public duty' which is delegated to the chambers by the state authority; therefore, as it is a state measure it cannot be defined as an 'agreement of enterprises', and thus neither the Hungarian nor the EU competition law can be applied to it.

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[33] ECO decision in competition law Vj-137/1999/18: http://www.gvh.hu/gvh/alpha?do=2&pg=11&st=1&m5_doc=2839

[34] ECO decision in competition law Vj-180/2004/32: http://www.gvh.hu/gvh/alpha?do=2&pg=11&st=1&m5_doc=4108, and decisions Vj-16/2005/22: http://www.gvh.hu/gvh/alpha?do=2&pg=11&st=1&m5_doc=4112

The competition boards of the Economic Competition Office in both cases took into consideration the analytical viewpoints elaborated by the European Court of Justice in drawing the line between state and entrepreneurial decisions in the Reiff [35], the Delta [36], and Wouters [37] cases, and also referred to CNSD[38], and rulings of the Arduino[39] case. In order to distinguish between the state or entrepreneurial nature of chamber regulation the European Court of Justice devised a system based on three aspects:

1. It must be examined who are involved in decision making, who delegates/appoints members of decision making bodies, and to what extent are these members independent from the electors/ those delegating. In considering whether a decision is of a state nature it must absolutely be examined whether state organs – directly or through their delegates – have any influence in reaching the decision or to what extent.
2. To what extent does public interest effect the decision, more precisely, is the chamber under any obligation to take public interest into account, or is it sufficient to consider the interests of its own members?
3. Finally, it is of paramount importance to what extent is state control exercised over decision making. A decision may be defined as having a state nature if any representative of the state, or pursuant to point 1 the state directly is engaged in the decision making and has an impact on its outcome, or a state organ having the right to substitute the decision of the parties by its own does so if the former fails to meet the public interest.[40]

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[35] Judgement of the Court of 17 November 1993, Bundesanstalt für Güterfermverkehr v Gebrüder Reiff GmbH co. KG. Case C-185/91. European Court Reports 1993 Page I-05801

[36] Judgement of the Court (Sixth Chamber) of 9 June 1994, Bundesrepublik Deutschland v Delta Schiffahrts- und Speditionsgesellschaft mbH. Case C-153/93., European Court Reports 1994 Page I-2517

[37] J.c. J. Wouters, J. W. Savelbergh, Price Waterhouse Beastingadviseurs B V versus Algemeine Raad van de Nederlanse Orde van Advocaten (European Court Reports 2002, Page I-577)

[38] Commission versus Italy, C-3596 European Court Reports, 1998, Page I-3851

[39] C-35/99 criminal procedure against Manuele Arduino (European Court Reports 2002, Page I-1529) All judgments are quoted and analyzed by P. Miskolczi Bodnár: 'A kamarai szabályzat, mint vállalkozások társulásának döntése I. és II.' /in his study entitled 'Chamber Regulation as Decisions of an Association of Enterprises Parts I-II'/, *Versenytükör* 2nd year 3rd (October 2006), pp 35-38; part II., *Versenytükör* 2nd year 4th issue, (December 2006) pp 33-36; on the same topic see also M. Király: i.m. pp. 165-168.

[40] With respect to the Wouters case where the question in issue was the regulation of the Dutch Bar Association the European Court of Justice put it this way: 'If a member state grants regulatory authority to a professional body, it shall precisely determine what are the criteria of public interest and retains the right of final decision making, then the decisions of the organisation qualify as state measures and do not fall under corporate competition law any longer.' (Quoted by ECO decision in competition law cases: Vj-16/2005/22 GVH)

In both cases the competition boards having considered these criteria held that

- the decisions are reached by organs of chambers which are freely elected by the members; the state fails to delegate members to the decision making bodies, and has no effect in the decision making process in any way;
- statutes conferring regulatory rights upon chambers normally refer to public interest in prescribing general requirements for the professions; nevertheless, none of these specifies 'exactly the criteria of public interest';
- Legal supervision over chambers is endowed with rather few entitlements, it may only detect unlawfulness, but no government organ has the competence to alter a decision, i.e. no state organ has the right to pass an alternative decision and substitute it for the chamber's decision.

Consequently, the following conclusion was drawn in both cases: these chambers' regulations are not government measures, but 'agreements of the association of enterprises', which fall under the auspices of competition law, and decisions on competition restrictions are to be assessed in this light.

The above judgment in competition law resulted in a peculiar turn in the relationship between the Hungarian professional chambers and the state. As it was seen, in enacting laws on chambers the primary goal of the representatives of each profession was to reach a great independence from the state, to protect autonomy at all costs and creating regulatory safeguards to this effect. The minister exercising supervision was to be understood at the time under 'state', and safeguards of self-governance of chambers was guaranteed above all by imposing heavy restrictions on this legal supervision. These endeavours were so successful that legal supervision is not exercised in restricting the regulatory authority of chambers. However, then unexpectedly, other state organs were granted competence in examining the operation of chambers, and what so far had constituted an advantage towards the legal supervisors turned into a disadvantage, as autonomous operation itself qualifies public bodies, private law organisations, and chambers' regulations entrepreneurial agreements from a competition law perspective.

V. The future of 'public supervisory control' of chambers

Problems of a competition law nature deriving from corporate regulation pose the question the second time in the period of modern history whether there is a need at all for these professions, should their special dual capacity and mediating role – which links the private and the public sector – be preserved. This dual capacity had been once abolished by political power and the influence of

the state between the two world wars in Central and Eastern Europe, by turning public bodies into organisations which transmitted government intentions as against its members'. The question today is whether global capital movements, the strive for maximizing the freedom of competition and expanding it are compatible with the autonomy of the professions and with their special market and professional regulations or will these endeavours destroy these corporations constituting a bar to the free movement of capital.[41]

There is no answer to this question yet. However, there are some circumstances which must be taken into account in the Hungarian regulation pertaining to professional chambers and their operation.

- Firstly, these professions are becoming international in scope as it was mentioned several times earlier.
- Secondly, a change closely related to the former is that the person-oriented and self-employed nature of these services tends to disappear slowly and to different extent in each profession. This process already took place in the professions practised in the health care system (medical doctors, others) decades ago. The doctor as a sole practitioner is limited to providing primary care and this form of operation is only confined to certain medical professions, however, more serious medical care may only be performed in a team. The change occurring in the profession of advocates of offering services as a group of practitioners rather than as sole practitioners is quick and spectacular. As opposed to an advocate working as a sole practitioner the big law firms can offer more complex services. Their capital power, market position and system of connections provide greater security and other advantages for the clients.
- By the increase in size and losing the person oriented nature of services there is a growth in the number of intellectuals working as employees in these professions as well. Fewer conflicts may arise if practitioners of the profession are also the partners or owners of the firm and exercise the rights of employers over their employees having same qualifi-

[41] The president of the Hungarian Bar Association formulated this doubt in his festive speech which has already been quoted in the following way: 'Expectations regarding our profession also change. It is a positive future prospect that our profession which has been confined to remain within our borders so far practically becomes an international profession in certain aspects. We are glad to see these changes but we are also watchful whether we are obliged to sacrifice our traditional moral principles and code of conduct which characterize our profession and distinguish it from a purely business venture. Whether in the era of global multinational firms is it possible to retain our profession as a vocational activity or will it simply turn into a service-like activity where certain principles pertaining to a profession rather than a business venture can hardly be kept and protected…' Dr. Jenő Horváth i.m. p.5.

> cations as the partners themselves. In several professions this practice is intended to be preserved. However, the fate of some professions demonstrates that the intrusion of operating capital into professional enterprises cannot be impeded.[42]

On the other hand, contradictory effects may also be discerned. By becoming international the professions organized themselves at an international level as well. These international formations at a European or global level set international standards for these professions, thus regulation is raised to an international level. The adoption and observance of international norms are guaranteed by the mutual acknowledgement of qualifications and conditions of launching a practice on the market. However, international regulation protects the special position of these professions in various issues just as domestic chambers of member states do at a national level. In such a way, these organisations also partake in the bargains of drawing the market border lines of these professions only at an international level.[43]

It must also be noted that there is no uniform opinion on the operation of professional chambers within the different EU institutions. The European Parliament made a Statement in 2005[44] on the legal profession and the general interests relating to the operation of legal systems. Here, it emphasized all those values which have so far been accepted for the practice of law (high qualifications, confidentiality, independence, expertise, probity, responsibility). Point 7 of the Statement remarks '*that each type of activity of a particular professional body needs to be examined so that regulations on competition are to be applicable to professional organisations merely if they exclusively promote the interest of their own members, but are not applicable if acting in view of the public interest.*' Point 9 expressly encourages chamber regulation: '*Point 9*

[42] The 10-year struggle that pharmacists pursue for the assertion of inherent rights is very instructive. To this aim forms of business have been restricted on a statutory level, buying up of pharmacies and certain forms of mergers were prohibited. It resulted in that the division of the pharmacy business was carried out through enterprises operating in the background.

[43] In the case of bar associations such organisation is the Council of Bars and Law Societies of Europe (CCBE), or with regard to accountants the International Federation of Accountants (IFAC) since 1977. It is a special problem deriving from international membership and regulation that in particular cases international regulation is contradictory to community competition law and the chamber of a member state is forced between two fires. Such chamber is obliged to adopt international regulation for the sake of its members who are commissioned or simply working abroad, but simultaneously it has to comply with community and Hungarian provisions of competition law. This conflict usually arises in cases with reference to the ethical regulation of the chamber of auditors. The competition board of ECO in its latter decision which has already been referred to, e.g. prohibiting the chamber to apply regulations on advertising and publicity which were deemed as restrictive practices by the same court; however, it ignored to impose a fine. (See decision No. Vj-16/2005/25 on competition law cases)

[44] The text of the Reference is published in *Ügyvédek Lapja* (2006) 2 pp. 13-16.

encourages professional bodies, organisations and associations of the legal profession to create a code of conduct – including rules on structural affairs, qualifications, professional ethics, supervision, liability, communication – at a European level in order to offer ultimate clients of the legal services probity and guarantees as to experience, and provide a well functioning administration of justice;'

All these facts underline the belief that there is yet no answer as to the future of professional chambers. It is apparent, however, that the future of public bodies, the answer to the problems raised far outreach the scope of the national states, and call for a European or even – without much exaggeration – global solution. This must be taken into consideration when drafting any domestic regulations pertaining to chambers. In order to partake in the moulding of these processes and not only sustain their outcome, both the representatives of the government and of the chambers continuously need to examine and assess the market of professional services and the operation of chambers from the aspect of the European inner market and economic competition, and adjust national legislation to it as well as chamber regulation.

SUMMARY

Chambers of Professional Services and Europeanisation

MARIANNA FAZEKAS

Exercising certain professions is a personal service closely connected with basic human rights. Let us mention medical doctors, pharmacists and legal practitioners as examples. On the market of these services quality, reliability, the personal and professional competence of the service providers and the special protection of the clients are important values that are safeguarded everywhere by a complex system of guarantees.

In numerous countries of Europe professional chambers play that role. Such chambers have always been special mediators between professionals and the state. Traditionally, these institutions are closely related to the national economy and the nation-state. That framework, however, is in the process of disintegration even on the market of professional services and service providers are becoming subjects of either the European or the world market. Market players

often criticize professional chambers for their restrictive, competition-distorting and corporative practices.

In recent years the European Court of Justice has assessed the regulatory norms of chambers on several occasions, and the Hungarian Competition Authority has also made several related decisions. Hungary's membership in the European Union has substantially changed both the traditional characteristics of professional services and the operation of chambers, which has a major impact on their future. In order to analyse these changes, the study discusses the reorganization of the Hungarian Chambers of Professional Services, the role of chambers in the 'public supervisory control' of service providers and the chambers' relationship to the state.

RESÜMEE

Berufskammern und Europäisierung

MARIANNA FAZEKAS

Die Ausübung bestimmter Berufe bedeutet persönliche Dienstleistungen, die eng mit den grundlegenden Rechten der Menschen in Verbindung stehen (z.B. medizinische, pharmazeutische, juristische Dienstleistungen). Auf dem Markt dieser Dienstleistungen sind Qualität, Zuverlässigkeit, persönliche und berufliche Qualitäten des Dienstleisters, sowie der besondere Schutz der Person, die die Dienstleistung in Anspruch nimmt, Werte, die überall durch ein mehrstufiges Garantiesystem geschützt werden.

Ein Protagonist dieses Systems ist in zahlreichen Ländern Europas die berufliche (Berufs-) Kammer der Dienstleister. Die Berufskammern sind eigentümliche Vermittler zwischen denjenigen Personen, die einen bestimmten Beruf ausüben, und dem Staat. Diese Kammern hängen traditioneller Weise mit der nationalen Wirtschaft und dem Nationalstaat zusammen. Diese Rahmen sind jedoch auch auf dem Markt der „beruflichen Dienstleistungen" (professional services) auf dem Weg der Desintegration, und die Dienstleister werden immer mehr zu Subjekten des europäischen, oder sogar des Weltmarktes. In diesem Umfeld müssen die Berufskammern immer mehr Angriffe erdulden, da ihr – den Wettbewerb einschränkendes, verzerrendes, korporatives – Verhalten bemängelt wird.

Auch der Europäische Gerichtshof bewertete in mehreren Urteilen die Kammernormen aus wettbewerbsrechtlicher Sicht, und parallel dazu wurden auch die ersten diesbezüglichen Entscheidungen der ungarischen Wettbewerbsbehörde getroffen. Der Spielraum auf EU-Ebene hat sowohl hinsichtlich der traditionellen Spezifika der beruflichen Dienstleistungen, als auch der Tätigkeit der Berufskammern zahlreiche bedeutende Veränderungen zur Folge, die die Zukunft der Kammern grundlegend beeinflussen. Zur Beurteilung dieser Veränderungen gibt die Studie einen Überblick über die Reorganisation der ungarischen beruflichen Kammern, ihre Rolle in der „öffentlichen Kontrolle" der Dienstleister und ihr Verhältnis zum Staat.