

Mrs. SNEŽANA MALOVIĆ
Minister of Justice of Republic of Serbia
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Brussels, 20 July 2010

Object: Fiscal Cash Registers for Lawyers in Serbia

Dear Minister,

We refer to our letter of 5 October 2009.

We understand that discussions on the introduction of fiscal cash registers for lawyers are ongoing.

Since the very beginning the CCBE has, at the request of the Serbian Bar Association, participated in the process for finding a solution to the problem of fiscal cash registers for lawyers in Serbia. You will recall that in our letter of 5 October 2009 we expressed the opinion that the introduction of fiscal cash registers for lawyers in Serbia does not achieve a proper balance between the interests of the state in having a solid taxation system on the one side, and in having an independent Bar Association on the other side. We also raised concerns in our previous letter as to the specific dangers that the present Serbian law on the matter presents with reference to the independence of the legal profession in general and the Serbian Bar.

In the context of the ongoing discussions with your Ministry and to assist those discussions, we have been asked by the Serbian Bar Association to provide our current views on these two issues.

Comparative legal survey on fiscal cash registers

In 2009, the CCBE conducted a comparative legal survey which covers to date the Bars and Law Societies of 23 countries (Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Romania, Slovakia, Slovenia and Spain).

The results of the survey showed that none of the participating countries have fiscal cash registers for lawyers' activities. Cash registers in these countries are only used for commercial activities such as in supermarkets but not for professional (service rendering) activities. Other means are used to keep records of legal services for tax authorities. In nearly all European countries, lawyers have obligations to declare their revenues. They keep records of the income generated and expenditure incurred in connection with the legal services they provide. Lawyers in these countries usually provide tax reports on an annual basis and apply VAT to legal services, in which cases they have to report within certain intervals. The information contained in declarations or receipts varies from country to country. There are nevertheless some commonalities concerning reporting obligations that can be noticed. In the majority of countries the type of legal services does not need to be specified. Names of clients and lawyers and dates of services are provided in a number of countries. In some countries, for the purposes of professional secrecy, the name of the client cannot be given (it will be replaced by a code, etc.). Under all regimes there are mechanisms for the protection of professional secrecy and all lawyers have the right and duty to keep clients' matters confidential. Courts and/or

Bar Associations themselves have a key role in balancing professional secrecy with other interests. Tax authorities will check declarations. In case of irregularities, authorities across Europe may usually impose penalties or fines. They usually also give the lawyer the possibility to correct information, etc. before taking any decision. In some countries, tax authorities can also carry out on-site inspections. These visits must usually comply with a number of requirements (court order, presence of a Bar representative, etc.). Professional secrecy must be safeguarded in these cases.

A copy of the full survey is attached.

Independence of the Legal Profession

One of the main characteristics of the legal profession in Europe is that Bars and Law Societies are independent, self-governing bodies, which are in charge of regulating and administering the legal profession. Independence is an indispensable part of the rule of law, without which a modern society cannot exist.

This principle is expressed in the Council's of Europe Recommendation Nr. R (2000) 21 which states that "*Bar associations (...) should be self-governing bodies, independent of the authorities and the public*" (Principle V, 2). The United Nations Basic Principles on the Role of Lawyers (adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, hereinafter referred to as "UN Basic Principles") recognise the role and importance of professional associations of lawyers within society as well. It is also one of the ten core principles of the Charter of the Core Principles of the European Legal Profession adopted by the CCBE on 24 November 2006.

This self-regulation of the legal profession through independent Bar Associations also plays an important role in guaranteeing the independence of the individual lawyer. A lawyer's membership to a liberal profession (and the authority deriving from that membership) is a vital mean of maintaining his or her individual independence, which is a basic principle, enshrined in the UN Basic Principles, the Council's of Europe Recommendation Nr. R (2000) 21 and in a number of International Associations of Lawyers and CCBE resolutions. The CCBE Charter of Core Principles of the European Legal Profession also lists the independence of the lawyer amongst its core principles, which are common to the whole European legal profession.

The Serbian legislation at hand raises several issues of concern for us. It allows the revenue authority to prohibit lawyers from exercising their profession if they do not use the cash register machines. An appeal against such a decision is not permitted. This provision puts the independence of the legal profession at stake in both the collective and individual senses. The self-government of the legal profession implies that normally only Bar Associations or Law Societies may impose sanctions that may affect the core of the legal practice and prohibit or suspend lawyers from practising their profession. Thus, by the present legislation the Serbian legislator ignores the Serbian Bar's standing within the justice system. If a state authority is authorised to suspend lawyer's activities in the proposed manner, the administration of justice would be put at stake. The individual independence of the lawyer is also at risk as in the case of suspension of activities the lawyer is prevented from pursuing his or her activities of advising and representing his or her clients and left without the right to appeal the decision of the revenue authorities.

Other Issues of Concern

In addition, we would like to underline other issues of concern which were previously raised in our letter of last October.

We would like to point out that suspending a lawyer from practice serves to deprive his or her clients of access to justice. Any such suspension of the exercise of the profession might have serious consequences for the administration of justice, since clients will be left without proper assistance and representation by their lawyers. In our view, this provision clearly runs counter to an 'effective' assistance/representation of clients through their lawyers guaranteed by the European Convention on Human Rights. Likewise, the Council of Europe Recommendation and the United Nations Basic Principles emphasise the importance of the clients' effective access to justice.

Moreover, the absence of the right to appeal against suspension from practice would deprive lawyers of the right to effective judicial control over such decisions.

We would also like to underline that the proposed introduction of cash registers also significantly endangers professional secrecy because it would require lawyers in Serbia to reveal the names of their clients and the nature of the legal service that each of them has been provided.

For the abovementioned reasons, the CCBE is of the opinion that the present Serbian legislation represents a disproportional intrusion in the independence of the Bar and recommends that the solution to the problem should exclude the use of fiscal cash registers for lawyers and employ other means of guaranteeing a solid taxation system.

The CCBE is ready to further contribute with its expertise in the search of a proper legislative solution.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'JMD', written over a horizontal line.

José-María Davó-Fernández
CCBE President

Annex:
CCBE survey