

To: **Mr. BORIS TADIĆ**,
President of the Republic of Serbia
General Secretariat of the President
of the Republic of Serbia
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Brussels, 5 October 2009

Object: Fiscal cash register for lawyers

Dear President,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which represents more than 700,000 European lawyers through its member bars and law societies of the European Union and European Economic Area. In addition to membership from EU bars, the CCBE has also observer and associate representatives from a further ten European countries' bars.

The Serbian Bar Association has brought to the CCBE's attention the current discussions regarding the Serbian Law on fiscal cash registers, which was published in the official gazette of the Republic of Serbia no 153/04 of 21 December 2004, and the Regulation about determination of activities for which it is not obligatory to record the turnover through a fiscal cash register, which was published in the official gazette of the Republic of Serbia no. 18/2009 of 16 March 2009.

At the outset, the CCBE would like to stress that lawyers are guardians of fundamental rights, freedoms and liberties as well as of the rule of law principle. Lawyers thereby ensure the essential foundations of a democratic society, having a vital role in the administration of justice and in maintaining the rule of law, both of which are essential foundations of a democratic society. The role of lawyers in society has been recognized by the Council of Europe Recommendation Nr. R (2000) 21 on the freedom of exercise of the profession of lawyer of 25 October 2000 as well as by the United Nations Basic Principles on the Role of Lawyers of 14 December 1990.

In respect of the ongoing discussions the CCBE would like to comment on three particular issues.

1) Fiscal cash registers

We understand that under the Regulation of 16 March 2009, which will enter into force on 28 February 2010, lawyers will be brought within the scope of the Law on fiscal cash registers. Lawyers will therefore need to register each and every service they deliver through an electronic cash register which would have to be installed with every lawyer/in every law firm.

The CCBE consulted its member Bars and Law Societies on this and found that in none of the European countries due fiscal cash registers exist for lawyers' activities. Cash registers are only used for commercial activities such as in supermarkets (selling activities) but not for professional (service rendering) activities.

The CCBE does not understand the aim of introducing cash registers and urges a justification of the proposal.

2) Lawyers' accounts and tax declarations

The CCBE consultation has showed that lawyers keep records of the income generated and expenditure incurred in connection with the legal services they provide. In nearly all European countries, lawyers have to declare their revenues to the authorities. Tax reports are usually provided on an annual basis and VAT is applicable to legal services in which cases professionals have to report within certain intervals. The information contained in declarations or receipts (which might need to be attached to declarations) varies from country to country. However, whichever regime is adopted it remains a fundamental principle that all lawyers have the right and duty to keep clients' matters confidential and to have the professional secrecy respected. This must be safeguarded in all circumstances. This serves the interest of the administration of justice as well as the interest of the client. The Council of Europe Recommendation Nr. R (2000) 21, mentioned above, recognises confidentiality as a primary and fundamental right and duty of the lawyer: "*Professional secrecy should be respected by lawyers in accordance with internal laws, regulations and professional standards. Any violation of this secrecy, without the consent of the client, should be subject to appropriate sanctions.*" (Principle III, 2) Moreover, the United Nations Basic Principles on the Role of Lawyers provide that "*Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential*" (Principle 22). The CCBE Charter of Core Principles of the European Legal Profession also refers to the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy.

3) Suspension of the exercise of the profession

We further understand that the Law, which would apply to lawyers after entry into force of the March Regulation, will allow the revenue authority to prohibit lawyers from exercising their profession for 60 days if they register their turnover through non-fiscal means (i.e. not using the cash register machine). An appeal against the authority's decision will not be permitted. Criminal sanctions can be applied in these cases and taxpayers would have to pay a fine.

Such a provision can in our opinion have serious implications for the administration of justice.

First, the CCBE would like to draw your attention to the fact that Bars and Law Societies are independent bodies, which are in charge of regulating and administering the lawyers' profession. This is a characteristic of the legal profession in Europe. This implies that only Bar Associations can normally prohibit/suspend lawyers from practising their profession. It seems that the Serbian legislator ignores the Bars' and Law Societies' standing within the justice system. The CCBE would also like to point, in this context, to the Council 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 also recognise the role and importance of professional associations of lawyers within society.

Second, the CCBE would like to underline that any suspension of the exercise of the profession – as proposed by the Serbian legislator – might have serious consequences for the administration of justice, since clients will be left without proper assistance and representation by their lawyers. It seems that the Serbian legislator has not clearly considered the consequences of such a proposal. We would like to note that elsewhere in Europe it is the common practice for Bars and Law Societies to arrange for the assistance and representation/defence of clients in cases where lawyers are being prevented from acting for their clients (whatever the reason for prevention might be). In the CCBE's view, the proposed changes clearly run counter to an 'effective' assistance/representation of clients through their lawyers. Article 6 of the European Convention on Human Rights guarantees *the right to a fair trial; this encompasses the right that everybody is entitled to legal assistance* which is practical and effective and not merely theoretical and illusory. This article together with principle I of the United Nations Basic Principles provides for *the right of persons to be defended by the lawyers of their choice during criminal proceedings*.

The CCBE would also like to point to the Council of Europe Recommendation Nr. R (2000) 21 which states that: "*(...) Any abstention by lawyers from their professional activities should avoid damage to the interests of clients or others who require their services*". Principle III and XVI of the United Nations Basic Principles emphasise that Governments shall ensure that everyone has effective and

equal access to legal services without suffering or being threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Third, the CCBE would like to indicate that if tax authorities found irregularities on the side of the lawyer, the revenue authorities across Europe 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 carry out on-site inspections. These visits usually must comply with a number of requirements (court order, presence of a Bar representative etc). Besides, it should be noted that a lawyer can never be obliged to produce any information which is covered by professional secrecy/legal professional privilege. Finally, we would like to indicate that the lawyer always has the right to appeal the decision of the tax authorities. Anything else would run counter to the principle of effective judicial control laid down in Article 6 which states: "*1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...)*" and Article 13 of the European Convention on Human Rights, that states: "*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*".

The CCBE urges you to consider these comments in your further discussions.

The CCBE will be pleased to provide further input into the discussions, if this would be of any assistance.

Yours sincerely,



Anne Birgitte Gammeljord
CCBE President