

To: Mr. SALI BERISHA
Prime Minister of the Republic of Albania
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Brussels, 28 October 2010

Object: Fiscal cash register for lawyers

Dear Prime Minister,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which represents around 1 million European lawyers through its member bars and law societies from 31 full member countries. In addition to membership from EU bars, the CCBE has also associate and observer representatives from a further eleven European countries' bars.

The Albanian National Chamber of Advocacy has brought to the CCBE's attention developments regarding the Law No. 9920 of 19 May 2008 "On Tax Procedures in the Republic of Albania" (hereinafter referred to as "the Law"), published in the Official Gazette No. 85, which regulates the obligation of tax payers, including lawyers, to record their cash payments through fiscal devices. It also seems that the technical implementing steps have been completed in June 2010. We were also informed about the later amendments to the Law, introduced on 23 December 2009 by Law No. 10209, which, among other provisions, established sanctions for non-compliance with the duty to install fiscal devices, which can range from penalties to suspension or closure of the tax payer's activities. The amendments also introduced the right of tax authorities to seize any documents, computer equipment or fiscal and other means of keeping records from tax payers.

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 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 recognised 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.

The CCBE would like to comment on three particular issues concerning fiscal cash registers and lawyers.

1) Fiscal cash registers

We understand that the Ministry of Finance has now started with the technical implementation of the Law and from June 2010 lawyers in Albania must record their services through cash registers.

However, you may wish to note that the CCBE has consulted its member bars and law societies and found that in none of the European countries 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. A copy of the full CCBE survey on fiscal cash registers is attached as an annex.

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 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 allows the tax authorities to prohibit lawyers from exercising their profession for a certain number of days if they do not have the relevant equipment for recording cash payments. The suspension of the exercise of the profession is combined with the imposition of fines. Non-compliance with the provisions could finally lead to the 'complete closure of all activities'.

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 Albanian legislative and executive authorities ignore 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 might have serious consequences for the administration of justice, since clients will be left without proper assistance and representation by their lawyers. It is possible that the authorities have not realised the consequences of the application of the law to lawyers. 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. Principle I of the United Nations Basic Principles

provides for the right of persons to be defended by the lawyers of their choice during all stages of 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, it should be noted that a lawyer can never be obliged to produce any information which is covered by professional secrecy/legal professional privilege.

The CCBE urges you to consider these comments.

The CCBE will be pleased to provide further input into the discussions. We are also willing to attend any relevant meeting on the topic, if this would be of any assistance.

Yours sincerely,



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CCBE President

Annex:
CCBE survey (79 pages).

CC:

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