

To: Prime Minister of the Republic of Armenia
Mr. Tigran Sargsyan
Republic Square, Government House 1,
0010 Yerevan, Republic of Armenia
Email: headstaff@gov.am

Brussels, 13 December 2010

Object: Cash registers 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 Chamber of Advocates of the Republic of Armenia has brought to the CCBE's attention discussions related to the legal status of legal professionals in the Republic of Armenia and developments regarding the Law of 22 November 2004 "On Usage of Cash Registers".

We are informed that, according to Armenian laws, legal activities are treated as activities of purely commercial nature.

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. The role of lawyers in society has been explicitly 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.

Lawyers are subject to core values such as independence, absence of conflicts, integrity and professional secrecy/confidentiality. The CCBE would like to underline the importance of these core values/obligations of the legal profession which can be seen as an instrument of how access to justice and the maintenance of the rule of law can be achieved. They are being safeguarded in states across Europe by legislators in any initiatives taken with regard to the lawyers' profession. It is important to note that the rules applicable to lawyers have not as their objective to secure the rights and benefits of lawyers, but to secure the rights and benefits of their clients in the interest of effective access to justice and a sound legal order.

We are also informed about the draft law amending the Law of 22 November 2004 "On Usage of Cash Registers" (hereinafter referred to as "the Law"). The proposed amendments of Article 4 to the Law introduce the obligation of entrepreneurs, including lawyers and notaries, to record their cash or card payments through cash registers. The Law also, among other provisions, establishes sanctions for non-compliance with the duty to install and use cash registers, which can range from penalties to unlimited suspension of the entrepreneur's activities.

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

- Use of cash registers

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 cash registers exist for lawyers' activities (a copy of the CCBE survey is attached as an annex). Cash registers are only used for commercial activities such as in supermarkets (selling activities) but not for professional (service rendering) activities. As stated above, lawyers have a particular role in society: their services should not be compared to standard commercial activities because of their role in the administration of justice.

You may also wish to note that similar discussions on the introduction of the fiscal cash registers for lawyers took place in Albania. The Ministry of Finance of Albania has recently informed the CCBE that after consideration of the CCBE's position and the experiences of other European countries, lawyers will be exempted from the obligation to install and use fiscal cash registers.

- 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. 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.

- 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 or use the relevant equipment for recording cash or card payments. The suspension of the exercise of the profession is combined with the imposition of fines. We also understand that after the amendment of the Law, lawyers will be obliged to obey the requirements set forth in Article 5 of the Law "On Organisation and Holding Checks in the Republic of Armenia" and therefore, the state bodies will be entitled to carry out checks on a lawyers' offices and demand for information about their clients at any time.

Such provisions 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 Armenian legislative 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 draft Law to lawyers. We would like to note that 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 discussion or to attend any relevant meeting on the topic, if this would be of any assistance.

Yours sincerely,



José-María Davó-Fernández
CCBE President

Annex:
CCBE survey on fiscal cash registers (71 pages)

CC:
President of National Assembly of the Republic of Armenia
Mr Hovik Abrahamyan
19 Baghramyan 0095,
Yerevan, Republic of Armenia
Email: abrahamyan@parliament.am

Ministry of Justice of the Republic of Armenia
Halabyan 41a, 0078
Yerevan, Republic of Armenia
Email: press@moj.am, info@moj.am