

Mr. Robert Fico
Prime Minister of the Slovak Republic

Úrad vlády Slovenskej republiky
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Slovak Republic

29 September 2014

Your Excellency,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE). The CCBE represents the Bars and Law Societies of 32 member countries and 13 further associate and observer countries, and through them around 1 million European lawyers.

The CCBE has been informed by our member, the Slovak Bar Association, that the Ministry of Finance of the Slovak Republic has recently introduced draft amendments to the Act on the Use of Electronic Cash Registers (ECR) aimed at preventing and reducing tax evasion, which would have direct impact on the legal profession.

I understand that the Ministry of Finance intends to impose the obligation to use electronic cash registers and issue cash receipts on liberal professions in Slovakia, including lawyers.

The Slovak Bar Association has raised its objections to this initiative and asked the CCBE to provide its views on the issue.

Since the very beginning of the discussion of such ideas, the CCBE has followed very closely and with concern the issue and has taken a position based on European and international legal texts which enshrine the fundamental role of lawyers in a society based on the rule of law and the lawyers' rights and duties as well as those of Bars and Law Societies.

In 2009 and 2013, the CCBE carried out 2 surveys, which showed that generally national laws do not require lawyers to use fiscal cash registers. There are reasons that countries do not impose fiscal cash registers for lawyers. Such registers are normally used for commercial activities (selling of goods) but not for regulated professional activities (service rendering). It is acknowledged that lawyers have a very particular role in the administration of justice and therefore their services cannot be compared to standard commercial sales activities. Rendering legal advice and legal representation of citizens is not comparable to a commercial commodity.

The proposed draft amendments by the Ministry of Finance of the Slovak Republic raise a number of concerns, particularly, regarding independence and self-regulation of the Bar, professional secrecy and confidentiality, a disproportionate administrative burden on lawyers, and access to lawyers.

1. Independence and self-regulation of the Bar.

At the outset, the CCBE would like to note that Bars and Law Societies are independent, self-governing bodies, which are in charge of regulating and administering the legal profession. Independence of Bars as well as of their individual members is an indispensable part of the rule of law, without which a modern democratic society cannot exist. Independence and self-governance of

Bar Associations are enshrined in the Council of Europe Recommendation Nr. R (2000) 21 on the freedom of exercise of the profession of lawyer of 25 October 2000 (further – Recommendation of the Council of Europe), Principle V as well as in the United Nations Basic Principles on the Role of Lawyers of 14 December 1990 (further – UN Basic Principles), Art. 24.

Bars normally have the exclusive competence over registration, temporary suspension and disbarment of lawyers. The new legislative initiative of the Ministry of Finance might lead to future state intervention in the independence and self-regulation of the legal profession.

According to the Act on the Use of ECR, the tax and customs authorities are entitled to impose a sanction of temporary prohibition of business activities or permanent withdrawal of trade licence in major cases. The Slovak Bar Association is concerned that the draft amendments will treat registration with the Bar as equal to a trade licence, without addressing procedural issues or the relationship between the capacity of the tax authorities to impose the abovementioned sanctions and the exclusive competence of the Slovak Bar Association regarding registration and disbarment of lawyers. Temporary or permanent prohibition of practice of law imposed by the tax and customs authorities would constitute a serious intervention in the self-regulation of the legal profession.

2. Professional secrecy and confidentiality.

Furthermore, the CCBE would like to emphasise 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, inter alia, by Recommendation of the Council of Europe as well as by UN Basic Principles and indeed by the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights.

The CCBE would also like to recall that lawyers are subject to strict deontological rules and are bound to safeguard core values such as independence, absence of conflicts, integrity and professional secrecy / confidentiality which are fundamental for the lawyer-client relationship (Recommendation of the Council of Europe, Principle III). The rules applicable to lawyers exist to secure the rights and benefits of their clients in the interest of effective access to justice and a sound legal order.

The use of electronic cash registers by lawyers might intervene with the principle of lawyers' professional secrecy and confidentiality. As the CCBE has been informed, the technical solution of electronic cash registers is based on an on-line connection between the cash register with the central system of the state authorities. Such interlinking might jeopardise protection of sensitive information about clients and cases stored in a lawyer's business computer which are subject to the lawyer's professional secrecy. Moreover, lawyers would have to keep all cash register records on file and disclose them to tax authorities upon their request for the purposes of their inspection and control.

If the use of fiscal cash registers became mandatory for lawyers in the Slovak Republic, European fundamental rights would be at risk as well as the lawyers' professional duties towards their clients. This would have serious negative implications for the administration of justice as a whole. In several European countries, for instance, the name of the client is part of the protection of confidentiality / professional secrecy; and the nature of the legal service cannot be given. Under all regimes, there are mechanisms for the protection of professional secrecy of lawyers and all lawyers have the duty to keep clients' matters confidential in the overriding interest of fundamental rights' protection.

The CCBE also highlights that governments have an obligation to respect all communications and consultations between lawyers and their clients within their professional relationship as confidential (UN Basic Principles, Art. 22).

3. Disproportionate administrative burden

As the CCBE has been informed, the Act on the Use of Electronic Cash Registers sets out an obligation to specify exactly every service provided to a customer (a client). The services must be described in such a way that enables a clear identification or description of the provided service; it has

to be ensured that every service can be clearly distinguished from other services.

When providing legal services to his/hers client, a lawyer takes various steps and actions (drafting of legal acts, suits, agreements or other documents, providing professional advice, etc.). An obligation to specify every step and action on the cash receipt issued for a client would place a disproportionate administrative burden on lawyers. Moreover, the Ministry of Justice Regulation on Lawyers' Fees and Compensations for the Provision of Legal Services provides for several ways of fee calculation. Not each of them enables a lawyer to assign a specific sum to every specific act undertaken for the client.

4. Access to a lawyer

Finally, the CCBE also has concerns about the negative impact of introducing cash registers on the right of access to a lawyer, especially with regard to socially disadvantaged groups. This new obligation would require initial investment and an increase in the costs of running a law firm. This would constitute a substantial financial burden especially for law firms and lawyers with a low number of clients and a small budget. It might be expected that such change would be reflected in the increase of lawyer's fee, which is negotiated between a lawyer and a client.

The CCBE would like to stress that access to lawyers is a basic principle, enshrined in the Recommendation of the Council of Europe (Principle IV) and UN Basic Principles (Art. 1-5). It is an obligation of the government to ensure that all persons have effective access to lawyers without any discrimination.

For the above mentioned reasons, the CCBE is of the opinion that introducing cash registers for lawyers in the Slovak Republic would represent a disproportionate intrusion into the fundamental principles which govern the lawyers' profession in the interest of the rule of law in all of Europe. Ideas aimed at a solid taxation system in the commercial sector should not at the same time undermine fundamental rule of law principles and core values of the legal profession.

The CCBE is ready to contribute further with its expertise and would appreciate being informed about further developments on the issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aldo Bulgarelli', with a long vertical line extending downwards from the end of the signature.

Aldo Bulgarelli
CCBE President