

## **CROATIAN BAR ASSOCIATION REPORT**



*Croatian  
Bar  
Association*

Last year in July the Croatian Bar Association Elective Assembly was held and the following people were elected: for the president a lawyer Robert Travaš, for the vice-presidents – lawyers Mladen Klasić, Branko Baica, Maroje Matana and Zoran Vukić, for the secretary general a lawyer Ingrid Mohorovičić-Gjanković, for the treasurer a lawyer Marijan Hanžeković, for the CBA representative at UIA Leo Andreis, for the CBA representative at CCBE Ranko Pelicarić.

Regarding the legislative activities the year 2012 in Croatia was mostly dedicated to the harmonization of the Croatian laws and regulations with the EU *acquis communautaire*, above all due to the expected accession of the Republic of Croatia to the EU on 1 July this year.

Of course, such intensive legislative activity placed before the Croatian Bar Association and its members many requirements often causing misunderstandings as some of the newly adopted laws also encompassed the lawyers and their professional organization. Above all that was the Act on Fiscalization in Cash Turnover adopted by the Croatian Parliament at the end of 2012, which came into force on 1 January this year, while the obligation to implement fiscal cash registers comes into force for lawyers as of 1 April this year. The Croatian Bar Association had deemed that the Act (Article 3) was contrary to the Croatian Constitution in regard to lawyers, and therefore it had submitted a motion to review the conformity of the Act on Fiscalization in Cash Turnover with Article 27 of the Constitution. Namely, Article 27 of the Constitution of the Republic of Croatia defines the legal profession as an autonomous and independent service providing everyone with legal aid in compliance with law, and Article 37 of the Constitution stipulates that the safety and secrecy of personal data is guaranteed for everyone. Besides the motion to initiate the proceedings to review the conformity of the Act with the Constitution, the Croatian Bar Association requested from the Constitutional Court of the Republic of Croatia to adopt a decision on the interim stay of enforcement of the Act on Fiscalization in regard to lawyers until the final decision is passed concerning the proceedings to review the conformity of the Act with the Croatian Constitution in regard to lawyers.



Under the provision of Article 9 of the Act on Fiscalization it is stipulated that for the purpose of implementing the fiscalization procedure the invoice, apart from the data proscribed by special regulations, must also state the time the invoice was issued, operator's (person's) code on the fiscal device, payment method code (bills, cards, cheques, transaction account, other), unique identification code of the invoice and security code of the issuer fiscalization obligor what represented a danger of affecting the legal provision on keeping lawyer's secrecy and confidentiality of the relationship between the lawyer and client. The Croatian Bar Association referred also to the support it received regarding its standpoint from the Union International des Avocats (UIA) and Council of Bars and Law Societies of Europe (CCBE) in their letters from 21 November 2012 and 11 October 2012 sent to the Prime Minister of the Republic of Croatia Mr. Zoran Mlanović, the Minister of Justice Mr. Orsat Miljenić, the Minister of Finance Mr. Slavko Linić, the President of the Croatian Parliament Mr. Josip Leko and other highly positioned political officials in the Republic of Croatia. Both UIA and CCBE have pointed out in their letters that they are not aware of any country, whose bar associations are members of those organisations, where fiscal cash registers were implemented for lawyers too. CCBE and UIA have stated that such practice would be contrary to the international documents adopted by the Republic of Croatia such as the UN Declaration on Basic Principles on the Exercise of the Legal Profession, Council of Europe recommendations regarding the independence of the lawyer, and the freedom of the lawyer to pursue the client's case, the right and duty of the lawyer to keep clients' matters confidential and to respect the lawyer's loyalty to the client, as well as the CCBE's Charter of Core Principles of the European Legal Profession.

The implementation of the Act on Fiscalization in the Cash Turnover in regard to lawyers is also contrary to the decision by the Constitutional Court of the Republic of Croatia from 2002 under which the Constitutional Court explicitly states that providing legal help through legal profession cannot be understood as an economic activity on the market, and that such activity is exempted from the rules that apply to economy as the legal profession is one form of the judiciary activity. Therefore, the legal profession is defined under Article 27 of the Constitution as a service and not as an economic or entrepreneurial or commercial activity. The same opinion is shared by the Supreme Court of the Republic of Croatia which also explicitly stated under two of its decisions regarding the jurisdiction of the commercial or municipality court over a dispute between a lawyer and legal entity, that legal profession is not an economic activity, that is that lawyers are not defined as traders under the Company Act, and therefore the commercial court is not competent for the trial in disputes between a lawyer and legal entity.

The Croatian Bar Association on several occasions asked for a meeting with the Minister of Finance and Head of the Tax Office, and with the help of and in the organization of the Minister of Justice, Mr. Orsat Miljenić on 25 January 2013 a meeting was held with the Minister of Finance Mr. Slavko Linić and Deputy Head of the Tax Office Mr. Zlatko Fabijančić. The meeting was held at the Ministry of Justice and the Minister of Justice Mr. Orsat Miljenić was also present.

The Ministry of Finance persists on their interpretation and strict implementation of Article 3 of the Act on Fiscalization in Cash Turnover according to which fiscal cash registers must be implemented everywhere where the services are paid in cash, so it encompasses legal profession too because lawyers are income tax payers and law firms are profit tax payers.



Of course, if the payments for legal services are not done in cash it is not obligatory to acquire a digital certificate and the lawyer or law firm does not have to implement a fiscal cash register because it means that all payments for legal services are performed by payments directly to the lawyer's or law firm's account.

Concerning keeping of the lawyer's secret the Ministry of Finance acknowledged the objections from the Croatian Bar Association, CCBE and UIA. Therefore, in case of implementing fiscal cash registers in law offices or law firms and payments for services in cash, the invoice electronically sent to the Ministry of Finance does not contain the name of the client nor the type of the legal service performed but only the charged amount and identification number of the lawyer or law firm (OIB), and electronically within a few seconds a code is received which needs to be entered on the invoice issued to the client. The Ministry of Finance considers that in that way the obligation to keep the lawyer's secret is preserved.

At the meeting the following was also discussed: particularities when contracting and due payment of the lawyer's remuneration, pro bono work and other possibilities of contracting the lawyer's remuneration under the Tariff of the Croatian Bar Association, and problem arising from it concerning the VAT billing and calculation of the tax obligation for the legal profession. The Croatian Bar Association has drafted the guidelines pursuant to the Tariff and the same was submitted to the Minister of Finance who promised that the Ministry of Finance and Tax Office will take it into consideration, and on the bases of those guidelines draft an instruction on the grounds of which financial controls are going to be conducted in law offices and firms. In that way the danger lawyers have been exposed to so far would be avoided, and the danger is that only in Croatia the VAT is charged within 30 days from the issuing of the invoice regardless of the fact whether the invoice balance was settled or not, but the controls in several cases charged VAT to the lawyers for the performed services according to the Tariff taking no care of the freedom to contract the remuneration and the written contract on the subject between the client and lawyer or accrued lawyer's remuneration as regulated under the Tariff. That placed every lawyer or law firm in danger and in case of the financial control exposed them to high penalties and VAT and income tax or profit tax charges and for services that were not even invoiced, and let alone paid. The Croatian Bar Association protested because of such control and possibility that due to such misinterpretation of the Tariff by the Tax Office every lawyer or law firm can find oneself in a completely insecure situation before the tax control and exposed to a possibility to not only close one's office because of that but also to be under criminal prosecution for tax evasion. That situation is really unacceptable and the Croatian Bar Association's protest was acknowledged by the Ministry of Finance and for that particular purpose the guidelines and interpretation of the Croatian Bar Association will be taken into consideration and the aforementioned instruction on the legal profession financial control method is going to be drafted. At the meeting the Ministry of Finance asked the Croatian Bar Association to take into consideration the possibility of withdrawing the motion to review the conformity of the Act on Fiscalization in Cash Turnover regarding lawyers with the Constitution in order to preserve the financial control system without any exceptions. Therefore, that is going to be an item on the agenda and the Croatian Bar Association will be deciding about the same on the Management Board meeting to be held on 16 February 2013.

We will continue to report promptly to the CCBE and UIA about further developments regarding this matter.



Lawyer Tin Matić submitted a motion to the Constitutional Court of the Republic of Croatia to review the conformity of the Act on Administrative Dispute with the Croatian Constitution and the Croatian Bar Association joined in. Namely, a provision of Article 20 of that Act stipulates that only an official person of the public-legal body may on behalf of the public-legal body carry out actions in a dispute before the Administrative Court, what means that the public-legal body, that is the official person of that body, cannot employ a lawyer for representation before the Administrative Court. The stated provision is contrary to the provision of Article 27 of the Croatian Constitution as it prevents the legal profession, as an autonomous and independent service, to ensure legal aid for EVERYONE. Furthermore, that leads to violation of Article 29 of the Croatian Constitution regarding objective trial, and violation of Article 6 of the European Convention on Human Rights Protection – the so-called right to fair trial.

Regretfully we have to state yet again that so far the Croatian Constitutional Court has not decided upon the Croatian Bar Association's motion to review the conformity of the Act on Amendments of the Act on Legal Profession with the Croatian Constitution, and the same was initiated in 2009.

We believe that the stated proceedings the Croatian Bar Association has initiated before the Croatian Constitutional Court will not be swiftly and effectively finalized, and the reason stated is overburdening of the Court. Therefore, it is difficult to expect the constitutional legal protection of the legal profession within a reasonable period of time, and the decision regarding those cases could be adopted in the years yet to come.

On 8 and 9 March 2012 the Croatian Bar Association held the 30<sup>th</sup> Day of Croatian Lawyers. The topic of the seminar held on 8 March was; ***Unconstitutional provisions of the Croatian Criminal Procedure Act with parallel presentation of the provisions of the Italian criminal procedure***. Together with Croatian lawyers, Italian lawyers also participated as reporters; Giovanni Bana, Lucio Camaldo, Federico Cerque, lawyers in Milan.

It needs to be said that the Constitutional Court at the end of last year finally decided upon the initiative to initiate the review of conformity of the Criminal Procedure Act with the Croatian Constitution that was put forward by CBA and several lawyers. It was determined that numerous provisions (around 40) of that Act are contrary to the Constitution.

On 9 March 2012 a round table discussion was held on the subject of ***"Advertising in Legal Profession"*** where Mr. Axel C. Filges, the president of the German Federal Bar Association presented his opinion on the subject as well as Dr. Wolfgang Kleibel a lawyer from Salzburg and Paul O' Higgins, SC – the president of the Bar Council of Ireland, who, among others, participated in the discussion as reporters.

Also we would like to report that the highest recognition of the Croatian Bar Association, the plaque "Dr. Ivo Politeo" with a charter for exceptional work in legal profession and cooperation with the Croatian Bar Association was awarded in 2012 to Corrado de Martini, a lawyer in Rome.

We would like to inform you that the 31<sup>st</sup> Day of Croatian Lawyers will be held in Zagreb on 14 and 15 March 2013.

On 14 March a round table discussion will be held on the subject of "Life-Long Professional Education of Lawyers" with the participation of the Law Society of England and Wales, German Federal Bar Association, Austrian Bar Association and one of the reporters is going to be professor Ivo Josipović PhD, the President of the Republic of Croatia. A seminar on the subject of "Free Legal Aid" will be held on 15 March in cooperation with the Austrian and Slovenian bar associations.

We are sure that in 2013, and especially if Croatia becomes a full-member country of the EU on 1 July, Croatian lawyers are going to face new challenges as well as the Croatian Bar Association as their professional organization. We believe that we will be able to meet all the obligations that such a historical event anticipates.

A handwritten signature in black ink, appearing to read 'R. Travaš'.

Robert Travaš, President  
Croatian Bar Association