

SLOVENIAN BAR ASSOCIATION REPORT

European Presidents' Conference 2014

The most problematic issue that the Slovenian Bar Association faced in 2013 was certainly the "unlawful" searches of law firms, which first occurred in April of 2013 and then again in November 2013. If there was initially a question of the legality of searches due to the confiscations of computers and disks with all the attorney's records in electronic form (in light of Article 8 of the Attorneys Act, a law firm may only be searched on the basis of a court order passed by the competent court and only with regard to records and objects that are explicitly stated in the court order, while the confidentiality of other documents and objects may not be affected in the search), the encroachment on professional secrecy during the searches of law firms in November 2013 was even more explicit - a court order dated 18 November 2013 gave grounds for house searches at the addresses of law firms or offices, home addresses and personal vehicles of three lawyers, whereby the suspects in the proceedings were not the lawyers but their clients. Furthermore, a Bar representative was not present at these searches at home addresses and of personal vehicles, as the legislation does not explicitly demand it. The Bar protested against this impermissible encroachment on the attorney-client privilege (including in the manner that it announced for future reference the non-attendance of its representative in searches if the court order shows that the suspect is the client; the Bar also provided its proposal for proposed amendments to the Criminal Procedure Act suggesting that principles of caution be included in searches of law firms) and pointed out the encroachment on numerous constitutional rights of clients. As the courts reacted negatively to the Bar's appeals saying that they would not get involved in specific procedures, the Bar also asked the CCBE to intervene and filed a constitutional complaint with the Constitutional Court of the Republic of Slovenia for a review of the legality of the orders and prepared an initiative for the review of the constitutionality of the Criminal Procedure Act. Despite such a response, the Bar was faced with its powerlessness in the described cases of the breach of the principle of confidentiality, as neither the Attorneys Act nor the Criminal Procedure Act give it any kind of efficient legal means against impermissible encroachments on the fundamental principle of the legal profession.

Among the most important topics covered by the Bar in 2013 was also the issue of cross-border attorney activities or the joint activities of attorneys who perform their profession under the professional titles of their home country and Slovenian attorneys. In accordance

with Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 (to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained), the standpoint was adopted that a Slovenian lawyer may be employed by a branch of an international law firm and that lawyer candidates and trainee lawyers may perform their traineeships or candidacy in a branch of an international law firm that employs a Slovenian lawyer under the condition that the Slovenian lawyer is a mentor of the lawyer candidate or trainee lawyer.

In April 2013, the Ministry of Justice sent the Government of the Republic of Slovenia its proposed amendments to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP) for a hearing, which would, inter alia, prohibit attorneys from acting as official receivers. Following extensive discussion, the resolution that the Slovenian Bar Association opposes the proposed amendments to the ZFPPIPP was adopted in May 2013, as lawyers are actually the ones with the best professional qualifications for the work of an official receiver. The Bar believes that the dilemmas accompanying individual cases of abuse (these can occur with all official receivers, not only those who are also lawyers) should be solved differently and not with a general prohibition of performing this task for a whole segment of people. Our opposition to such a regulation was successful, which was probably also due to the fact that a major part of official receivers are lawyers and the proposed prohibition would undoubtedly have negative effects on the swiftness of bankruptcy proceedings.

Even though the Bar was not included in the discussion on the proposed Act Amending the Court Fees Act in June 2013, which foresaw a 10% to 40% increase in court fees, the Bar objected the proposal, as it believed that the proposed Act showed exceptional tendencies towards limiting access to judicial protection. Exemption from the payment of court fees only available for recipients of cash social assistance and the partial exemption, postponement or payment of court fees in instalments for individuals whose livelihood may be endangered due to the payment of court fees, is supposedly aimed at ensuring the constitutional right to judicial protection, while the Act at the same time overlooked those citizens (and in light of the economic crisis, their numbers are on the increase) who are not recipients of cash social assistance but who would be overburdened by the costs of court fees and who would thus not decide on the judicial protection of their rights (furthermore, the decision on the partial exemption, postponement or payment in instalments is uncertain and depends on the decision of the judge). The right to judicial protection is a constitutional value that should be intensively protected and upgraded during the crisis and it is the Bar's opinion that the proposed amendment to the ZST-1, which was adopted despite the Bar's objections, has only intensified the economic crisis and the crisis of values and the law.

Due to the intensified economic crisis, the third traditional Day of Pro Bono Legal Assistance, which was organised on 19 December (the day that the Slovenian Bar Association was established in Ljubljana in 1918 covering the entire national territory of the time), was even more welcome. This is a special day when lawyers across the country at the same time and in an organised manner offer free legal assistance to clients, even though many members offer such assistance on a daily basis in accordance with the Code of Conduct for Lawyers.

Numerous proposals and suggestions regarding legislative changes were provided throughout the year. In addition to the already mentioned proposals for the Criminal Procedure Act, ZFPPIPP and the Court Fees Act, there were also proposals for amendments to the Companies Act, the Notary Act, the Enforcement and Securing of Civil Claims Act, the Free Legal Aid Act, etc. In this respect, we pointed out the unacceptably short deadlines for providing comments on the foreseen amendments to the Ministry, as a few days are undoubtedly not enough for providing quality commentary on the extensive amendments, which often seriously encroach on the established regulation.

After numerous attempts at trying to solve the issue of the attorneys' fee, a meeting was organised in October 2013 between the President of the Slovenian Bar Association and the Minister of Justice, at which it was reiterated that the fact that the Attorney's Fee Act is still being applied, even though it has not been valid since 9 May 2009, is inappropriate. It was agreed at the meeting that a solution would be prepared by a mixed working group comprising both members of the Bar and representatives of the Ministry. The committee held its first meeting on 3 February 2014.

In addition to the traditional Attorney School organised in April 2013, the year 2013 also saw numerous other educational events for Bar members within the framework of continuing education.


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