

SLOVENIAN BAR ASSOCIATION REPORT

European Presidents' Conference 2015

ATTORNEY TARIFF AND AMENDMENT OF THE ATTORNEYS ACT

In the Official Gazette dated January 9, 2015, the new Lawyers' Tariff has been finally published after being put on hold by the Ministry of Justice for about six months due to alleged procedural issues. But, this development needs to be considered in light of another one. Namely, at the very end of 2014, the changes of the Bar Act were published and they entered into force on December 31, 2014. The changes were adopted in a fast-track parliamentary procedure, with extreme efficiency on the governmental side not giving any real opportunity to the profession or public to comment on the proposal. Although the changes do not refer only to remuneration for legal services, they can be primarily understood as a counter measure against the new Tariff since lawyers acting ex officio will be paid for their services at a reduced rate equal to 50 % of the Lawyers' Tariff. Consequently, the Slovenian Bar has decided to challenge the new provisions of the Bar Act before the Constitutional Court.

LAW FIRM SEARCHES AND CONSTITUTIONAL COURT DECISION

In 2013, the Bar Association of Slovenia was faced with illegal searches of law firms, the first in April 2013 and the second in November 2013. Based on orders dated 18 November 2013, house searches were performed in that same month at the addresses of law firms, the home addresses and the private cars of three lawyers, whereby the suspects in the procedures were not lawyers, but their clients and, in addition, the searches performed at home addresses and on vehicles were performed without the presence of a Bar Association representative, since this is not explicitly required by the law. The Bar Association responded to the illegal searches by filing a constitutional complaint to assess the legality of the orders and an initiative for the review of the constitutionality of the Criminal Procedure Act and the Attorneys Act. On 9 October 2014, the Republic of Slovenia Constitutional Court adopted decision ref.No. Up-218/14-25 and U-I-115/14-12, with which it accepted for consideration the constitutional complaints related to the searches and, furthermore, the constitutional initiative. It is derived from the statement of grounds indicated in the Constitutional Court Decision that the disclosure of data falling within the scope of the confidential relationship between the attorney and the client prejudices the privacy rights of attorneys and their clients. Attorneys are obliged to keep any information learned during the performance of their job confidential as professional secrecy and safeguard the confidential relationship with their clients. This is an attorney's deontological and legal duty. The Constitutional Court finds that

if the claimed human rights violations turn out to be substantiated, they shall constitute unacceptable infringements of human rights that will result in irreversible damage. With its decision dated 11 December 2014, the Republic of Slovenia Constitutional Court also stayed the execution of the orders at the proposal of the Bar Association by prohibiting further search actions relating to the seizures made on the basis of the search orders until a final decision is adopted by the Constitutional Court. The sealing of the confiscated electronic devices took place on the day following the issue of the Constitutional Court Decision in the presence of a Bar Association representative.

PROBLEMS REGARDING THE ISSUANCE OF INVOICES FOR ATTORNEY SERVICES DUE TO A VAT INCREASE

One of the more important issues discussed by the Bar Association in 2014 was the problem of attorney service taxation due to increased value-added tax. Based on the opinion provided by the Tax Administration of the Republic of Slovenia (now the Financial Administration of the Republic of Slovenia), the Court requested that attorneys issue invoices at a lower VAT rate as of 20 July 2013, despite an explicit legal provision stipulating that attorneys cannot issue invoices until they receive a decision defining the costs from the Court (paragraph 7 of Article 40 of the Free Legal Aid Act) and despite an express ban on issuing invoices at a 20% tax rate after 20 July 2013 (paragraph 3 of Article 60.a of the Implementation of the Republic of Slovenia Budget for 2013 and 2014 Act). In the case of reviewing the decision of the Republic of Slovenia Constitutional Court, the Bar Association of Slovenia notified an accessory intervention and supported the proposal of the attorney as the plaintiff to put forth preliminary questions to the Court of Justice of the European Union. If preliminary questions are put forward to the Court of Justice of the European Union, the Bar Association of Slovenia will propose that the CCBE take part as an interested party.

CERTIFIED CASH REGISTERS

This year again (for the third time after 2011 and 2013), the media reported on certified cash registers and future measures to be taken by the government in this area. As reported, certified cash registers would be mandatory for all entities dealing in cash, no exceptions allowed. The Bar Association of Slovenia again pointed out that certified cash registers fail to solve the tax evasion problem in cases when an invoice is not issued at all. There can be no benefits arising from the introduction of certified cash registers at attorneys'; however, possibilities of infringements of the principle of confidentiality or professional secrecy between the attorney and the client will increase, as well as of constitutional human rights. In light of the above, the Bar Association asked the Ministry of Justice, which agreed with the above arguments in 2011, to again provide its support and the latter addressed a letter to the Ministry of Finance proposing that the Bar Association of Slovenia be included in further coordination relating to the introduction of certified tax registers for attorneys.

COOPERATION OF THE BAR ASSOCIATION IN LEGISLATIVE AMENDMENTS

A number of proposals and remarks were made during the year relating to legislation amendments, i.e. in addition to remarks and proposals for the amendment of the Attorneys Act

and the amendment of the Criminal Procedure Act, remarks and proposals were also made concerning the Act Amending the Courts Act, the Act Amending the Judicial Service Act, the Act Amending the Companies Act, the draft Act on the Treatment of Juvenile Delinquents and so on. The Ministry was warned several times about unacceptably short deadlines for giving remarks to planned legislative amendments, since a quality comment on extensive amendments that often considerably affect the established regulation takes more than just a few days. Unfortunately, the warnings relating to adequate deadlines to provide remarks were unsuccessful, considering that there are cases when the Bar Association does not receive proposals for amending acts and thus cannot be in a position to provide comments. For example, the National Assembly is expected to discuss the bill amending the Free Legal Aid Act and the bill Amending the Court Register of Legal Entities Act In January 2015, yet the two documents were not sent to the Bar Association in the procedure of professional coordination. Since it is unacceptable that the Bar Association of Slovenia, as the expert public, is not included in cooperation in the preparation of the key acts in which the majority operators are in fact attorneys themselves (as in the case of the Act Amending the Free Legal Aid Act), the Bar Association warned the Minister of Justice, the National Assembly of the Republic of Slovenia and the Prime Minister, Dr. Miro Cerar, of this unacceptable practice.

TRADITIONAL PRO BONO DAY

The traditional day of pro bono legal aid held for the fourth time on 19 December 2014 (on 19 December 1918, the Bar Association was founded in Ljubljana, which covered the entire national territory at the time) was again very well received. Within its scope, attorneys throughout the country provide free legal assistance to clients in a simultaneous and organised manner, despite the fact that many members provide such aid on a daily basis pursuant to the Code of Professional Conduct of the Bar Association of Slovenia.

EUROPEAN LAWYERS DAY

The European Lawyers Day held on 10 December 2014 was marked by the Bar Association of Slovenia with the distribution of funds to those in need from the Bar Association's Humanitarian Fund. The Humanitarian Aid Fund of the Slovenian Bar Association, founded in 2004, provides monetary aid to humanitarian establishments and organisations and to individuals asking for assistance and in need of assistance, as assessed by the Board of Trustees, while the Fund's operating resources are provided from contributions made by attorneys at law in the Republic of Slovenia.

ATTORNEY TRAINING

In 2014, a number of training courses in civil law (property law) and criminal law were held at regional offices within the scope of continuous education, along with the traditional "Lawyers School", which was held in April 2014.

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