

## ***European Presidents' Conference 2016***

### ***Country report –Slovenian Bar Association***

#### ***SLOVENIAN BAR ASSOCIATION – SOME FACTS***

*The Lawyer Register kept by the Slovenian Bar Association has 1667 lawyers (932 male and 735 female) entered as at 7 January 2016. The Register of Prospective Entrants contains 199 prospective entrants (71 male and 128 female) and the Register of Pupils contains 360 pupils (129 male and 231 female).*

#### ***LAWYERS' TARIFF AND AMENDMENT OF THE BAR ACT***

*We have already reported that the new Lawyers' Tariff has finally entered into force in January 2015. But at the very end of 2014 also the changes of the Bar Act entered into force on December 31, 2014. 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 are being 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. The Constitutional Court rejected the initiative put forth by the Slovenian Bar Association.*

#### ***LAW FIRM SEARCHES AND CONSTITUTIONAL COURT DECISION***

*In December 2015, illegal searches of law firms engaging lawyers who were not suspects in pretrial proceedings again took place. These were even more controversial than those conducted two years ago; namely the scope of the search was disproportionate, since the court permitted the search of an entire law firm, both in spatial terms as well as regarding data and documents to be seized,*

*protected, and examined. The court order allowed investigators to not only seize and protect electronic data, but also examine it. Again, the subjects were law firms and lawyers who were not suspects in pretrial proceedings and had no legal remedies at their disposal other than those before the Constitutional Court.*

*Due to the controversial searches, the Slovenian Bar Association and the lawyers who were subject to the searches made a constitutional complaint against the court order and put forth an initiative for the constitutional review of the Bar Act and the Criminal Procedure Act in the part referring to searches of law firms.*

*In relation to similar searches conducted in 2013, the Constitutional Court of the Republic of Slovenia adopted in 2014 Decision Ref. Nos. Up-218/14-25 and U-I-115/14-12, with which it accepted for consideration the constitutional complaints made by the Slovenian Bar Association in relation to the searches, and the constitutional initiative. In the statement of grounds, the Republic of Slovenia Constitutional Court indicated that a disclosure of data falling within the scope of confidential relationship between the lawyer and client is prejudice to the privacy rights of lawyers and their clients. Lawyers 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 a lawyer's deontological and legal duty. At the time, the Constitutional Court found that if the claimed human rights violations turned out to be substantiated, they would constitute unacceptable infringements of human rights that would result in irreversible damage. Hence, with its decision dated 11 December 2014, the Republic of Slovenia Constitutional Court also stayed the execution of the search 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 under the presence of a Bar Association representative.*

*In relation to controversial searches of law firms in 2015, where lawyers were not suspects in pretrial proceedings, the Constitutional Court of the Republic of Slovenia, with its decision dated 7 December 2015, stayed the execution of the orders and decision of the court until a final decision is adopted by the Constitutional Court in relation to the constitutional complaint against the*



*mentioned court orders, also laying down the method of execution of that decision, i.e. by: "prohibiting any further search actions based on the court orders until a final decision is adopted by the Constitutional Court. It shall not be permitted to examine the documents, objects and electronic devices or their copies seized upon the execution of the court orders; police officials shall be required to seal them within 24 hours of receiving this decision upon the presence of a representative of the Slovenian Bar Association and a representative of the law firm or lawyer from whom they were seized. If copies of all or part of the data were made upon any inspection of electronic media, they are to be destroyed immediately."*

*In relation to the searches of law firms, special protection for the confidentiality of the data available to a lawyer and persons working at a law firm is only provided by Article 8 of the Bar Act, stipulating that a search of a law firm may only be allowed based on an order of the competent court, and only in relation to files and objects explicitly indicated in the search order, whereby the secrecy of other documents and objects must not be affected, furthermore stipulating the presence of a representative of the Bar Association of Slovenia. The Bar Act therefore only permits an invasion in the protection of data confidentiality based on a court order that must be specified in a manner preventing an invasion in the confidentiality of the data not relevant to the investigation. Notably, such regulation is incomplete, as it fails to specify the procedural status of the Bar Association representative and thus the possibility to have real influence on deciding which documents and objects are seized within the scope of the search. Within the scope of other search actions and measures, there is no definite legal basis that would provide protection of data confidentiality or is deficient (e.g. paragraph 5 of Article 154 of the Criminal Procedure Act), as it fails to prevent excessive familiarisation or storage of the confidential data disposed or disclosed by a lawyer or a person working at a law firm (e.g. the position of the Constitutional Court of the Republic of Slovenia in Decision Up-2530/06). Therefore, the Bar Association also proposed amendments to the Bar Act in relation to law firm searches. The fundamental principle observed by the proposed solutions is the protection of fundamental rights and freedoms provided by the Constitution of the Republic of Slovenia and the European Convention on Human Rights. The proposed solutions focus on the position of a lawyer and other persons working at a law firm, and hence in particular on the protection of the confidentiality of relationships between them and their clients within the scope of*



*Article 8 of the European Convention on Human Rights and Articles 35 to 38 of the Constitution of the Republic of Slovenia.*

*The principal solutions of the proposal are:*

- 1. prohibition to sanction an alleged perpetrator or persons bound to protect (professional or other) secrets and other persons with the right to refuse testimony for refusing to hand over or submit the required objects, files, or data;*
- 2. the regulation of mechanisms of (judicial) supervision over the searches and seizures infringing the protection of (professional or other) secrets;*
- 3. the regulation of additional mechanisms in case of undercover investigative measures;*
- 4. a differentiated regulation of permissibility to collect and process as well as use protected data in criminal proceedings.*

*On 21 January 2016, the Constitutional Court of the Republic of Slovenia reached the decision in this matter. In the process of constitutional review of the regulation, the Constitutional Court reviewed the merits of the assertions that the law contrary to the Constitution does not govern the permissibility of those investigative actions in a way that would guarantee their right to privacy, designed to protect the confidentiality of the lawyer-client relationship. It also reviewed the constitutionality of the alleged absence of effective redress procedures in the implementation of these investigative actions, if carried out against lawyers.*

*The Constitutional Court defined for the first time the scope of the lawyer privacy. It consists of the entitlements that are constitutionally protected under the Article 35, the first paragraph of Article 36 and the first paragraph of Article 37 of the Constitution of the Republic of Slovenia. Lawyer's privacy isn't protected only in a law office premise. The spatial aspect of privacy protects the lawyer wherever he pursues his profession or where the objects associated with it are (eg. an apartment, car, cottage). Thus the concept of a law firm should be interpreted because it isn't the space that is protected, but the privacy in it. Communication privacy means safeguarding the interest of the person to have control of the transmission of the communication by distance and to prevent the state and third persons to become acquainted with it. Direct communication of the lawyer with his client, notes and all the drafts kept by the lawyer are protected by a general privacy.*

*Lawyer's privacy is not absolute. Constitutionally permissible targets for interference with the privacy of lawyers are effective prevention, detection and prosecution of criminal offenses or the initiation and conduct of criminal proceedings. If it is permissible to interfere with the lawyer's privacy to prosecute crime, it is constitutionally permissible only if such intervention is necessary. Investigative actions against a lawyer are necessary only if the information or data, which are in direct relation to the specific criminal proceedings can only be obtained by the investigation of a law firm, not with other investigative activities. The second aspect concerns the carrying out of the investigative actions. If the investigated lawyer or the Bar Association representative don't have adequate legal means against the court order, that is against the constitutional right to the legal remedy. As long as the investigative judge leaves the conduct of the investigation to the police, and the law does not guarantee judicial control against its decisions, it contravenes the right to the court protection. In both cases, the Constitutional Court found that the unconstitutional void in the law governing investigative actions towards lawyers exists. The Legislator now has one year time to fill this void. In the meantime, the Constitutional Court has appointed the way of conducting the house searches of law firms, searches of electronic devices and seizures of things, as well as legal remedies in these proceedings.*

## **CERTIFIED CASH REGISTERS**

*As at 1 January 2016, the Fiscal Verification of Invoices Act entered into force. It stipulates the introduction of the so-called certified cash registers for all taxable persons operating with cash. All taxable persons who wish to operate with cash will have to decide by 2 January 2015 whether to use the certified cash register system (i.e. issuing invoices in cash operations and sending invoice data in real time for confirmation to the Financial Administration of the Republic of Slovenia via electronic devices) or a pre-numbered receipt book, as was the case until now. The transitional period will last until 1 January 2018, when only electronic devices will be permitted. The method of use must be laid down by a taxable person with an internal act. Despite the efforts made by the Slovenian Bar*



*Association to make lawyers exempt from this Act in light of the specifics of lawyer practice, no exception was made. The Bar Association has defended the position that the State could gain no benefits from the introduction of certified cash registers at lawyers', but would only increase possibilities of infringements of the principle of confidentiality or professional secrecy between the lawyer and client, and of the constitutional human rights.*

#### **PREPARATION OF THE NEW BAR ACT**

*In 2015, the Slovenian Bar Association commenced activities for the preparation of a new Bar Act. The provisions of the currently applicable Act are in need of amendments and supplements to the extent requiring the preparation of a new act that would regulate lawyership – from provisions regarding disciplinary liability of lawyers, methods to practice the profession of a lawyer, the organisation of law firms, and the obligation of continuing education for lawyers to laying down new terms and conditions for lawyer practice.*

#### **TRADITIONAL PRO BONO DAY**

*The traditional Pro Bono Day was held on 18 December 2015. Within its scope, over 500 lawyers throughout the country provided 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 2015 was marked by the Bar Association of Slovenia with the distribution of funds from the Bar Association's Humanitarian Fund to those in need. 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 lawyers in the Republic of Slovenia. Over €20,000 were donated.*

## CONTINUOUS TRAINING

*In 2015, a number of training courses were held at regional offices within the scope of continuing education, along with the traditional "Lawyers School", which was held in April 2015. Hence, lawyers received training in tax law, property and land registry law, family law, balance sheet reading, labour law, commercial law, criminal law and the Mental Health Act.*

*After many years of individual training at conventions and within the scope of the Bar Association and after 18 years of the Lawyers School, the continuing professional training of lawyers has come of age and evolved into the Lawyers Academy for all-round and continuous education of lawyers, pupils and prospective entrants in all legal and other areas.*

*Furthermore, the Bar Association intends to introduce compulsory training as a condition for lawyers' practice.*

## MEETING OF THE PRESIDENTS OF THE BARS FROM CENTRAL AND EASTERN EUROPE

*Slovenian Bar Association hosted the Meeting of the Presidents of the Bars from Central and Eastern Europe, in City of Celje on October 8. The topic of the meeting was: "The freedom of speech of lawyers in/and out of court".*

Roman Završek, President  
Slovenian Bar Association

