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Meeting of the Presidents of the Bars from Central and Eastern Europe

PAYMENT OF LAWYER'S SERVICES AND THE REMUNERATION OF FUNCTIONS IN THE BODIES OF THE BAR

Country report: Slovenian Bar Association

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1. PAYMENT OF LAWYER'S SERVICES

Lawyer's Tariff

The regulation setting the tariff of legal services for lawyers in Slovenia is the Attorneys' Tariff. The existing Attorneys' Tariff came into force in January 2015 and has been amended once, in 2017. This system's establishment predates the Slovenian independency from Yugoslavia in 1991, but in between, from 2009 to 2015, the tariff was regulated by the Attorney Tariff Act, which introduced a completely different and complex system and was imposed by the Ministry of Justice through legislation.

The Attorneys' Tariff is adopted by the Bar Association of Slovenia and subject to the consent of the Minister of Justice. The existing Attorneys' Tariff specifies that the value of the Attorneys' Tariff rate may only be changed in the event when the growth of the cost of living or the growth of judges' salaries in the period since the effect of the last increase exceeds 10 percent. The last increase of the Attorneys' Tariff rate took place in 2003, and since the conditions for the increase have been long fulfilled, the Bar Association of Slovenia, in charge of determining the Attorneys' Tariff rate, adopted the decision that the Attorneys' Tariff rate, then amounting to EUR 0.459, should be adjusted to the inflation rate, which amounted to EUR 0.610. The Minister of Justice, in spite of the fact that all the terms and conditions for the respective change have been met and fulfilled, refused his consent. Accordingly, the Bar Association of Slovenia had to introduce legal measures against the decision of the Minister of Justice before the

Administrative Court of the Republic of Slovenia in February 2016. The Bar's claim before the court failed, so the Bar introduced the appeal against the decision. The Supreme Court of the Republic of Slovenia, acting as an appellate authority, granted the appeal and returned it to the Administrative Court for a repeated procedure and a new decision. The Supreme Court's decision stated that the determination of the Attorneys' Tariff rate was not merely subject to political decision-making and that the Minister of Justice was not entitled to pass exclusively political, legally non-related veto to the changes of the Attorneys' Tariff proposed by the Bar. More so, any contrary approach would mean that the Attorneys' Tariff and the respective rate for lawyers' services are fixed politically, which is legally inadmissible. The Bar finds the decision of the Supreme Court to constitute the victory of the rule of law over political arbitrariness. In January 2019, the Administrative Court as the first instance court repeated the procedure, repealed the Minister's decision and returned it to the Minister of Justice for a new decision. On April 6 2019, the Attorneys' Tariff rate was settled at EUR 0.60.

The Attorneys' Tariff regulates the system for setting lawyers' fees in cases where there is no other agreement between the lawyer and the client. A lawyer can receive higher payment for the services rendered than is stated in the Attorneys' Tariff if agreed in writing. In property legal cases, instead of being paid by the Attorneys' Tariff, a lawyer can make a written agreement with a client that he will be paid in percentage (to a maximum of 15 percent) of what the courts will award to the client.

According to the provisions of the Attorneys Act and the Attorneys' Tariff the courts, other authorities and legal persons are obligated to use the Attorneys' Tariff when deciding within their remit about the remuneration and reimbursement of the costs of lawyer representation.

Types of payments and method of calculation

Lawyers are paid per certain type of procedure (e.g. criminal court procedure, administrative court procedure) and within that scope for a certain legal service (e.g. legal action, drawing a document, consultation, representation etc.) completed by the lawyer, which are worth a pre-determined amount of units (eg. 200) by the Attorneys' Tariff. One unit or rate (so called Attorney Point) is fixed and is worth EUR 0.60 as of April 6, 2019. The payments are then calculated as

an amount of units set for certain procedure / legal action by the Tariff multiplied by Attorney Point. Also, the fees under the Tariff in civil litigation proceedings refer to an assessment base, which is the litigation value (when it can be determined).

Payment of lawyer's services in Legal Aid procedures

In relation to the provisions of the Attorneys Act, when the new Attorneys' Tariff entered into force in January 2015, it resulted in lawyers acting in an ex officio or free legal aid capacity being paid at a reduced rate equal to 50 percent of the Attorneys' Tariff for their services. This means the level of remuneration of legal aid providers isn't sufficient, as a 50 percent pay cut imposed on lawyers could even be considered as a net loss when taking into account the overhead costs associated with such cases. The imposition of the 50 percent remuneration cut was a result of the 2008 global economic crisis, but it has remained in the lawyers' regulations ever since. The Bar and its members believe that a properly funded legal aid system should be established in order to provide proper remuneration to lawyers who represent clients before the Court now that the effects of the crisis have waned. The lawyers in Slovenia have fought this unsatisfying arrangement up to the Constitutional Court of the Republic of Slovenia, but no decision has yet been reached by the highest court.

2. THE REMUNERATION FOR FUNCTIONS IN THE BODIES OF THE BAR

There are more than 170 of Slovenian lawyers, all members of the Bar, who are actively engaged in the work of the Bar through its bodies. All are practising lawyers.

Up until now, the lawyers performed their work within the bodies as an honorary function. Only members of some of the bodies have been entitled to receive reimbursement of their travelling expenses. The Bar believes that the semi-professionalization (remuneration for work in the Bodies that is in the interest of the Bar and its members), which was already done in several Bars across Europe, is needed due to the far greater complexity and scope of the work that is required of its members – due to the significant increase in the number of lawyers, there is a wider regulation of the admission to practice and enrolment of lawyers, the Bar

is resolutely taking part in the law making process by commenting on draft legislation to law making institutions, the demands for international cooperation are heightened and broader in scope and content, new measures are necessary in order to improve the lawyers' profession due to the new technologies and the demands of rapid changes in the profession etc.

Types of remuneration

The remuneration for functions in the bodies of the Bar is stipulated in the amendment to the Statute of the Bar Association of Slovenia, coming into effect on July 12, 2019. It determines that work in the bodies of the Bar should be remunerated and that the Bar's assembly determines the scope and the amount of the remuneration.

We have only begun to examine the idea of introducing proper remuneration for work done on behalf of the Bar. The type of remuneration (whether it will be a fixed or variable session fee or something entirely different), the amount and the receiving functions are all yet to be determined.

Types of functions

The structure of the Slovenian Bar is classical – it consists of: a supreme body which is a general assembly, a president, an executive body, a controlling body, a disciplinary body, an ethics body and other committees and/or workgroups functioning (mostly) as advisory bodies. Most of the bodies of the Bar consist of the members who are lawyers.

The President, as the highest representative of the Bar, has several functions and the broadest scope of obligations, which also applies for 2 vice-presidents. Disciplinary bodies of the Bar (Disciplinary Prosecutor and his deputies, Disciplinary Committees, Disciplinary Court) are highly taxed as well due to the amount of complaints against the lawyers. And the same goes for the Ethics Committee. The Management Board as the executive body has on average one session per month, then there are the bodies with less frequent sessions: the Supervisory Board which controls the financial activities of the Bar, Committee on the Exam of Lawyer regulations, committees for the changes to the different legislations and several other workgroups and committees. There is the general

assembly as the plenary committee of all lawyers who are members of the Bar, and also the local Bar assemblies which are not an independent entity from the Bar itself but have an important function in relation to the enrolment into the register of lawyers. There is also a separate entity for the (initial and continuous) training of lawyers titled Attorney Academy, however it was established by the Bar.

The method of determining remuneration

The system of remuneration will be regulated in an internal act. There are several possible methods of calculating the remuneration the assembly could adopt. A lot depends on the financial resources available to the Bar. The options go from only the most taxing functions to be paid (the President and Vice-Presidents, Disciplinary bodies, Ethics Committee, possibly the Management Board) to a certain amount of payment for all the highly active functions.

One of the methods of calculation would be following the system stipulated for remunerations of the Judicial Council of the Republic of Slovenia (which is a body in the judiciary system that proposes to the National Assembly the candidates to be elected into judicial offices etc.). The work of the bodies of the Judicial Council is similar to the one of the bodies of the Bar. The presidents and members of the Judicial Council and presidents and members of the Ethics Committee get a fixed session fee for sessions up to 3 hours, and for longer sessions a fixed hourly rate for each next starting hour (president gets a higher amount than members). The presidents and members of the disciplinary court get the one-time lump sum (in which case, president also gets a higher amount than members). The costs related to participating in the work of the bodies, consisting of daily fees, travel costs and parking fees also get reimbursed.

Another method of calculating the remuneration would be following the provisions of the Attorneys' Tariff, which for the services that are time-related but not specifically determined in the Tariff, stipulates 50 Attorney Points for each started half an hour (Attorneys' Point value being fixed at EUR 0.60).

The third potential methodology is to monitor the amount of hours spent working in the function. Based on the amount of hours spent, and compared to the annual

time spent by the President and other members, an adequate compensation would be determined.

Other methods include a scaling system dependant on the different type of functions or adopting the systems of the remuneration of the Bodies in the Bars that have already included them in their procedures.

So far, we have only started looking into the methodology options for calculating the remuneration. Every subject is open for discussion at this point, from the type of remuneration to its amount and receiving functions.

Professionalization yes or no

Historically, work in different bodies of the Bar was performed as an honorary function. Such involvement was considered as a straightforward, if necessary, assignment which members of the Bar participated in willingly, as stewards of the justice system. As a recognition for its members taking time and other resources to contribute to these tasks that are in the interest of the Bar and its members, the Bar would reimburse the travelling expenses incurred by the bodies' members.

In recent years, the tasks performed by the different bodies of the Bar have become far more complex, far-ranging and time-consuming than could have been forecasted.

The reason for these changes is multi-faceted. Firstly, with a significant increase in registered lawyers their enrolment in the register and consecutive procedures have had to go through a similar expansion.

Secondly, the Bar, and its constituent bodies, have become far more involved, as an important stakeholder, in the law-making process by contributing its practical interpretation, as well as its objections, to draft legislation before it is accepted and implemented. Since there has been so much new legislation adopted in the past few years, the activities of the Bar's bodies have practically grown ten folded.

Thirdly, the Bar has been striving to increase its visibility on the international stage, which resulted in the reinforcement of connections with other national

Bars, both in breadth and scope of the mutually beneficial cooperation, as well as with the CCBE.

Lastly, the Bar has, in addition to its core regulatory functions, undertaken some initiatives affecting the justice system and the delivery of legal services. One of such is the collaboration with the Human Rights Ombudsman to improve access for individuals from lower socio-economic status that are not eligible for free legal aid to pursue their legal rights. Another one is highlighting and addressing mental health issues of the legal profession through the Attorney Academy which was established by the Bar. In the future, more major initiatives will be underway.

In light of all of the evolution of the ever-growing demands put upon members of the bodies of the Bar, and the Bar's own initiatives, we are of the opinion that we should follow in the footsteps of other Bars which have introduced remuneration. We believe that such compensation would be fair, especially considering the demands put upon the profession due to quick changes in the legal field.