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# CCBE RECOMMENDATIONS ON DISCIPLINARY PROCESS FOR THE LEGAL PROFESSION

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**Conseil des barreaux européens – Council of Bars and Law Societies of Europe**

*association internationale sans but lucratif*

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## CCBE RECOMMENDATIONS ON DISCIPLINARY PROCESS FOR THE LEGAL PROFESSION

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*“Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilised societies. The failure of the lawyer to observe these rules may result in disciplinary sanctions.”*

– CCBE Code of Conduct for European Lawyers, Preamble 1.2

Each Bar or Law Society has its own system of disciplinary proceedings arising from its own traditions. These proceedings nevertheless are based on a common set of principles that recognise the role of the legal profession within society and the values which are inherent to the legal profession, including the right of Bars and Law Societies to participate in the conduct and decision-making of disciplinary proceedings concerning lawyers. In this regard, reference is also made to international and European instruments.<sup>1</sup> The Bars and Law Societies of Europe are committed to these principles, which are essential for the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention of Human Rights. Courts, legislators, governments and international organisations should seek to uphold and protect these principles, in the public interest.

The basic principles are, in particular the following:

- (a) although the State may set the framework within which disciplinary proceedings should take place, the proceedings should be independent of state authorities (excluding the ordinary court system);**
- (b) the primary responsibility of the conduct of disciplinary proceedings at first instance concerning lawyers preferably lies with the Bar or Law Society;<sup>2</sup>**
- (c) disciplinary proceedings should be carried out in accordance with the principles of due process, as laid down in the European Convention on Human Rights, including the right to defend himself/herself through legal assistance;**
- (d) disciplinary proceedings should be separate from criminal trials of the same alleged misconduct;**
- (e) attorney-client privileged confidential information should be protected throughout the disciplinary proceedings, without prejudice to the lawyer’s right to self defence;**

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<sup>1</sup> See: Council of Europe Recommendation Rec(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer of 25 October 2000; Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; and European Parliament resolution on the legal professions and the general interest in the functioning of legal systems of 23 March 2006 (P6\_TA-PROV(2006)0108).

<sup>2</sup> Except in Norway where lawyers who are not members of the Bar Association can choose a handling of the complaint in first instance by a Disciplinary Committee which is appointed by the government. This also applies to principle (a).

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## **Annex**

*United Nations*

### **Basic Principles on the Role of Lawyers**

*Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990*

[...]

#### *Disciplinary proceedings*

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

*Council of Europe*

### **Recommendation Rec(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer**

*(Adopted by the Committee of Ministers on 25 October 2000 at the 727<sup>th</sup> meeting of the Ministers' Deputies)*

[...]

#### *Principle VI - Disciplinary proceedings*

1. Where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn up by Bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings.

2. Bar associations or other lawyers' professional associations should be responsible for or, where appropriate, be entitled to participate in the conduct of disciplinary proceedings concerning lawyers.

3. Disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Convention on Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision.

4. The principle of proportionality should be respected in determining sanctions for disciplinary offences committed by lawyers.

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**European Parliament resolution on the legal professions and the general interest in the functioning of legal systems of 23 March 2006 (P6\_TA-PROV(2006)0108)**

[...]

C. whereas the UN's Basic Principles on the Role of Lawyers of 7 September 1990 provide that:

- lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference;
- professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from prosecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and the public interest;
- disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review,

[...]