

NATIONAL SPECIALISATION REGIMES IN THE CCBE MEMBER COUNTRIES

National Rules: Portugal

BRIEF NOTE ON LAWYERS' SPECIALTIES REGIME

The first official reference to the subject of lawyers specialisation laid in article 80.º (n.º 5) of the Bar Association's Statute, passed by Decree-Law n.º 84/84, of March 16th.

One of the conclusions of the Second Congress of the Bar Association (1985) was to recommend the establishment of a lawyer's specialties regime. The V Congress of the Bar Association (2000) reiterated this recommendation.

Following the abovementioned recommendations the Bar Regulation n.º 15/2004, established a transitory specialisation's scheme which was to be later reassessed and improved.

Under Regulation n.º 15/2004 a Lawyer could be recognised as a Specialist Lawyer in the following areas:

- * Administrative Law;
- * Tax Law;
- * Employment and Labour Law.

The Bar Association Decision n.º 832/2004, of April 5th, introduced four new areas of specialties:

- * Finance Law;
- * European and Competition Law;
- * Intellectual Property Law;
- * Constitutional Law.

Extended amendments were introduced by the Bar Association Regulation n.º 204/2006, of October 30th. This regulation revoked all the previous regulations/decisions on this subject.

The necessary requirements were then more demanding: for instance the years of necessary experience to apply, were doubled from five to ten; and the recognition proceeding was also reassessed and became more challenging.

While under Regulation n.º 15/2004, the decision to grant the specialist title could be based solely on the analysis of the applicants' curriculum - and this became, in fact, the general rule – under Regulation n.º 204/2006, the candidate is submitted to a public exam, and the exemption from exam is the exception.

Currently, all applicants undergo a public exam.

The decision to grant the specialist title lies on the General Council preceded mandatorily of the candidate's approval in the public oral examination.

Lastly, the current specialties regime in force has been set under the new Statute approved by Law 145/2015 of September 9th, in article 70 as following:

Article 70

Professional title of lawyer and specialist lawyer

1 - The denomination of lawyer is exclusively reserved for lawyers with updated registration in the Bar Association.

2 - Honorary lawyers may use the title of lawyer provided they follow the indication for that category.

3 - Lawyers may only identify themselves as specialists when the Bar Association has awarded them such qualification in at least one of the following areas:

- a) Administrative Law;
- b) Tax Law;
- c) Employment and Labour Law;
- d) Banking and Finance Law;
- e) European Law;
- f) Intellectual, Industrial Property and Competition Law;
- g) Constitutional Law;

(updated in Decision 1004/2016 of June 20th and laid in Annex to current Regulation n.º 9/2016 of January 6th)

- h) Criminal Law;
- i) Company Law;
- j) Family and Minors Law;
- l) Consumers Law;
- m) Environmental Law;
- n) Gender Equality Law;

- o) Health and Bioethics Law;
- p) Maritime Law;

For further details please consult with current regulation's translation hereunder.

2020-06-23

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Official Journal Publication

<https://dre.pt/application/file/a/73040084>

Regulation n.º 9/ 2016 of January 6th

Preamble

Considering the time elapsed since the entry into force of Regulation no. 204/2006, of October 30th and the recent entry into force of the new Statute of the Portuguese Bar Association (Law no. 145/2015, of September 9th) it is justified to adapt the specialisation regime to the new legal reality, taking into account the acquired experience, the recent reassessment of all specialist Lawyers' procedures over the last three years, as well as, considering the growing differentiation of the areas of law in view of the complexity of social and economic-financial relations that has been followed up by the Portuguese Bar Association and which, promptly, demands expansion of recognized areas of specialties, a strict and added demand in the fulfilment's verification of the necessary requirements for the attribution and confirmation of the specialist title to applicants.

SPECIALTIES GENERAL RULES

SECTION I

General part

Article 1

Scope and application

- 1 - The present regulation defines the regime for awarding the title of Lawyer specialist and defines the practice areas that, within the legal practice, are considered specialties.
- 2 - The provisions of this diploma apply to all Lawyers holding registration into force in the Bar Association.

Article 2

Nature of the title

- 1 - The title of Specialist Lawyer is a certification of competence within the specific area of the respective specialty and does not limit the general legal practice of the beholder, nor prevent any Lawyer from practicing law in the area of specialties recognized by this Regulation.
- 2 - The specialist lawyer may use and disclose his title, under the permitted terms by the Statute of the Bar Association.

Article 3

Minimum requirements

Lawyers with full force registration may acquire the title of Specialist Lawyer at the Bar Association, uninterrupted for over ten years, with the same minimum period of effective practice of Advocacy in the area of the invoked specialty and to whomever is recognized, theoretical and practical specific competence.

Article 4

Specialty exercise

- 1 - The specialist lawyer, as such, must maintain the practice and acquire continuous training in the area of the respective specialty.
- 2 - At the end of each five-year period, starting from the award of the title, the Specialist lawyer will deliver a professional curriculum before the General Council, prepared under the terms of article 7 of this Regulation, demonstrating the carried practice and the training acquired in the area of the respective specialty, in the previous five years, under penalty of automatic loss of title, despite the possibility of submitting a new application.

Article 5

Definition of specialties

- 1 - The areas of legal practice considered specialties are established by the General Council, which will also define its respective contents.
- 2 - The list attached to this Regulation, which is an integral part of this, contains the currently recognized specialties, and its within the General Council's competence, at all times, to recognize other specialties or eliminate any of the existing ones.

SECTION II

From the title assignment

Article 6

Application

- 1 - The request for the award of the title of Specialist Lawyer must be formalized through a request addressed to the General Council.
- 2 - In the application, the candidate will demonstrate the ability to acquire the title, describing, in detail, their legal training and practice, in the desired specialty area.
- 3 - The candidate will follow the application with the attached documents, in physical or digital support, confirming the curriculum description, with special relevance to the acts regarding legal practice, under penalty of outright rejection of the claim, despite the possibility of the General Council may request additional information or documentation.
- 4 - The applicant may submit declarations from people and accredited entities, as to state his/her professional qualities or his/her training and practice.

Article 7

Professional curriculum

- 1 - In the curriculum description, the candidate will show the academic training acquired and participation in training activities in the area of specialty to which he/she is applying, joining the respective documentary certification that he/she holds.
- 2 - Effective practice in the specialty area must be described in detail, with the identification of cases and subjects that the candidate has sponsored as a Lawyer, indicating the type of advice provided and presenting copies of written pieces that the candidate has produced in the exercise of this specific advice.
- 3 - The information provided under the previous number is subject to professional secrecy, under the terms of article 92 of the Statute of the Bar Association.
- 4 - The candidate will also indicate essays he/she has published and the publications where, evidently, has participated, adding a copy of each, when the publication is not widely

disseminated or easily accessible or whenever it is requested by the rapporteur of the application procedure.

Article 8

Notification of the application process

1 - The application process, once opened, is presented to the General Council, who appoints a rapporteur amongst its members.

2 - The General Council may outright reject the application if it finds that it has not fulfilled the requirements regarding the minimum enrollment or effective practice periods, provided for in article 3, if the desired title seeks an unrecognized specialty or if the candidate, clearly, does not meet the requirements to be granted the desired title.

3 - If the General Council does not reject the application, the appointed rapporteur sends the file to the jury of the specialty in question, in order to schedule a public oral exam for access to the specialty.

4 - The General Council may request the candidate, the Regional Councils, the Delegations, a Lawyer or any public or private entity, additional information about the professional's curriculum.

Article 9

Specialty jury

1 - The juries for the various recognized areas of specialty will be composed of three lawyers appointed by the General Council, when deciding to approve the admission to public oral exam.

2 - The members of the jury will be appointed amongst specialist lawyers and lawyers of recognized competence and practice in the area of the application's specialty.

3 - The General Council appoints one president of the jury for each area of specialty, who will carry his/her functions until he/she is replaced by the General Council, implying its replacement the termination of functions of the remaining members of the juries.

4 - The President is in charge of the general coordination regarding the functioning of the jury, chairs the procedures during public exam, ensures compliance with the respective regulation and the satisfaction of logistical needs before the services of the Bar Association.

5 - The members of the juries of the specialties are responsible for ensuring the public oral exam under the terms of article 10 and article 11 no. 1, and for determining the dates of its realization, approving or not the applicant at the end of the exam.

6 - The specialist lawyer is obliged to join the jury, when appointed.

7- Lawyers whose relationship with the candidate is likely to influence the evaluation must not be appointed to the jury.

Article 10

Public exam

1 - The public oral exam is given by the candidate before three lawyers who will constitute the jury of the exam, under the terms defined in the previous article.

2 - The public oral exam consists of:

a) Debate on the professional curriculum presented by the applicant;

b) Debate on issues, chosen by the jury, related to the specialty in the application.

3 - The jury decides, by majority, to consider the candidate approved or not approved.

4 - The jury may, in the preparation of the public oral exam, request the applicant, the bodies within the Bar Association or any other entity, additional information about the professional curriculum.

5 - After the public oral exam is completed, the file is referred to the General Council, with the evaluation information given by the jury.

Article 11

Title assignment

1 - The title of Specialist Lawyer is awarded by resolution of the General Council, necessarily preceded by the candidate's approval in the public oral exam, given before the specialty jury.

2 - Failure to award the title of Specialist Lawyer inhibits the candidate from re-applying for the next two years.

SECTION III

Appeals

Article 12

Appeals

1 – From the General Council's decisions, which outright reject the application, which do not award the title of Specialist Lawyer or which determine the loss of that title, the Superior Council may be appealed.

2 - The Superior Council may request the candidate, or any other entity, information on the professional's curriculum or on the specific subject of the appeal.

3 - There is no appeal from the qualification given by the jury to the candidate as result of the public oral exam.

SECTION IV

Loss of specialty title

Article 13

Loss of title

1 - The specialist lawyer loses the respective title of specialist:

a) With the suspension of registration before the Bar Association;

b) If he/she does not periodically send, to the General Council, the curriculum provided for in paragraph 2 Article 4;

c) If the analysis of the professional curriculum delivered under the terms of paragraph 2 of Article 4, shows that the Specialist Lawyer has not maintained a practice, nor acquired consistent training with the specialty title awarded.

2 - The loss of the title of Specialist Lawyer, provided for in paragraphs a) and b) of the above number is automatic, and in the case of paragraph c) of the same number, preceded by decision of the General Council.

SECTION V

Final dispositions

Article 14

Revocation

The General Regulation of Specialties, approved in plenary session, of the General Council of 14th July 2006, Regulation No. 204/2006, published in Diário da República, 2nd series, No. 209, of October 30, 2006, is hereby revoked.

Article 15

Time application

1 - The present regulation applies to application procedures that are opened after its entry into force.

2 - Confirmation of the titles of Specialist Lawyer awarded under the Regulation no. 15/2004, of January 9th and Regulation no. 204/2006, of October 30th, will be carried out in compliance with the provisions of paragraph 2, article 4, and points a), b) and c), of paragraph 1 and paragraph 2, of article 13, of the present Regulation.

Article 16

Implementation

This regulation comes into force on the day following its publication.

Lisbon, December 22th, 2015.

The President of the General Assembly and

President of the General Council,

Elina Fraga

ANNEX

Recognized specialties

(referred to in Article 5 (paragraph 2))

Administrative Law;

Tax Law;

Employment and Labour Law;

Banking and Finance Law;

European Law;

Intellectual, Industrial Property and Competition Law;

Constitutional Law;

Criminal Law;

Company Law;

Family and Minors Law;

Consumers Law;

Environmental Law;

Gender Equality Law;

Health and Bioethics Law;

Maritime Law (added by Decision 1004/2016 of June 20th)