

National Rules: Portugal

BRIEF NOTE ON LAWYERS' SPECIALISATION REGIME

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

One of the conclusions of the Second Congress of the Bar Association (1985) was to recommend the establishment of a lawyer specialization 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;
- Labour Law.

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

- Finance law;
- European and Competition Law;
- Intellectual Property Law; and,
- Constitutional law.

Lastly, the current in effect specialisation regime was introduced by the Bar Association Regulation n.º 204/2006, of 30th October 2006. This regulation revoked all the previous regulations/decisions on this subject.

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The necessary requirements are now more demanding: for instance the years of experience necessary to apply, were doubled - from 5 to 10 -; 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 candidates' curriculum - and this became, in fact, the general rule – under Regulation n.º 204/2006, the candidate has to take a public exam, and the exemption from this exam is the exception.

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

For further details please consult the regulation.

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BAR ASSOCIATION - PRESIDENT'S BUREAU

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Regulation n.º 204/ 2006 of 30th October

Preamble

The social-economic development has increased the need, the diversity and the complexity of the legal assistant, this, combined with the increase of the number of lawyers, lead to a reorientation of the practice of law towards the accentuation of the specificity of the knowledge and of the legal practice in order to meet the increasing selective demand, which prefers the specialised competency.

Attentive to this reality and with the purpose of providing Society with accurate information on the specific abilities of lawyers, the Ordem dos Advogados felt it was its duty to differentiate, with the quality of Specialist, lawyers who, for their studies and practice, demonstrate specific expertise in a certain area of law.

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

One of the conclusions of the II Congress of the Bar Association (in December of 1985) recommends the creation of the Specialist Lawyer title in areas of specialisation selected according to the public interest and the sociological reality. This recommendation was reiterated in V Congress, in May of 2000.

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Following the abovementioned recommendations the Bar Regulation n.º 15/2004, established a transitory specialisation's regimen, until the approval of the definitive regime, task that is now fulfilled.

The present regulation benefits from the experience acquired from the previous one, and intends to confer truth to the procedure of granting the quality of Specialist Lawyer. The evaluation procedure is based on the assessment of the knowledge acquired and of the practical experience demonstrated by the candidate lawyer. For that purpose a deepened analysis of the candidacies was established, with the assessment by the College of the Specialities of the level of knowledge and practice of the candidate in the area of the respective specialty.

Taking the specialty examination, with approval, will be, as a rule, an indispensable requirement for the attribution of the quality of Specialist by the General Council.

In these terms:

The General Council of the Bar Association, in the plenary session held on the 14th July of 2006, decides, under subsection g), of n.º 1, of article 45 of Portuguese Bar Association's Statute, passed by Law n.º 15/2005, 26th of January, to approve the following regulation:

General Regulation of the Specialties

Section I General Part

Article 1 - Scope and application

1 – The present Regulation lays down the procedure to grant the Specialist Lawyer title and defines the areas of practice that, within the practice of advocacy, are considered specialties.

2 – The provisions of this regulation apply to all lawyers who have their membership active in the Ordem dos Advogados.

Article 2 - Nature of the Title

1 – The lawyer specialist title constitutes a certification of specific ability in the area of the respective specialty but it does not limit the legal practice of the bearer, nor does it hinders any other lawyer to exert law in the area of the specialties recognized by the present Regulation.

2 – The specialist lawyer may use and divulge his title according to the provisions of the Bar Association's Statute.

Article 3 - Minimum Requirements

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Lawyers who have their membership in the Bar Association active for an uninterrupted period of ten or more years, with an equal minimum period of effective exercise of law in the area of the invoked specialty, to whom specific theoretical and practical expertise is recognized, may obtain the title of specialist lawyer.

Article 4 - Performance of the Specialty

1 – The specialist lawyer, as such, should maintain his practice and acquire ongoing training in the respective area of specialty.

2 – In the end of each period of five years following the attribution of the title, the specialist lawyer shall deliver his Professional Curriculum, draw up according to article 7 of this Regulation, demonstrative of the practice exercised and of the training completed in the respective specialty area during the previous five years, to the College of Specialties.

Article 5 - Definition of the Specialties

1 – The areas of the legal practice that are considered specialties are decided by the General Council, which also lays down their respective content.

2 – The list in the annex to this Regulation, which constitutes an integral part of the same, contains the specialties currently recognized, being vested in the General Council the power to, at any time, recognize other specialties or to eliminate any of the existent ones.

SECTION II

Granting of the title

Article 6 - Candidacy

1 – The request for the attribution of the specialist lawyer title is formalized by the way of an application delivered or sent to the head office of the Ordem dos Advogados and addressed to the General Council.

2 – In the application the candidate shall demonstrate to possess the competence necessary to be granted the title, describing, thoroughly and in detail, his education and legal practice experience.

3 – The candidate will provide all the documents or other means of proof deemed adequate to substantiate the curriculum description, with particular focus on the legal practice.

4 – The candidate may provide written statements of people and entities corroborative of his professional qualities or regarding his training and practical experience.

Article 7 - Professional Curriculum

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1 – In the professional curriculum description the candidate shall demonstrate his academic education and the participation in training sessions in the area of specialty that he is applying for, providing the respective certifications that he possesses.

2 – The effective practice of law in the area of specialty should be thoroughly described with the identification of the case-files and subject matters that the candidate has undertaken/sponsored, as a lawyer, identifying the kind of advisement provided and the name of client, and presenting copies of the written documents that the candidate has drafted concerning that specific advisement.

3 – The information provided under the previous number is subjected to professional secret, according to the provisions of article 87.^o of the Bar Association's Statute.

4 – The candidate shall describe, additionally, the published material which he has demonstrably contributed to, providing one copy of each when the publication is not widely available or easy to obtain, or whenever the candidacy procedure's rapporteur requests so.

Article 8 - Registration of the application procedure

1 – The application file, once started and registered, is presented to the General Council that shall nominate a rapporteur from amongst its members.

2 - The General Council may summarily reject the application when the candidate does not meet the minimum years of membership or effective practice of advocacy laid down in article 3, if the title requested concerns an ineligible specialty or if the candidate manifestly does not fulfil the necessary requirements in order to be granted the requested title.

3 – If the General Council does not reject the candidacy the designated rapporteur will send the application file to the College of Specialties in order to schedule the oral public examination of access to the specialty.

4 - The General Council may request the candidate, the Districts Councils, the Delegations or any other entity, additional information about the professional curriculum of the candidate.

Article 9 - College of Specialties

1 – Its hereby established the College of Specialties which is comprised by all the specialist lawyers with active membership in the Ordem dos Advogados.

2 - The College of Specialties shall perform the following competencies: to determine the content of each of the specialties recognizable under the present regulation, to approve or to reject the candidates in the public oral examinations and to encourage the ongoing training in the areas of specialties.

3 – The General Council shall appoint the President of the College of Specialties from amongst the specialist lawyers, who has the competence to designate and to substitute the responsible/chair of each of the specialties.

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4 – The President shall exert his powers while he is not replaced by the General Council and its replacement causes the termination of functions of the lawyers in charge of the specialties, without prejudice of the possibility of being restored to office by the new President.

5 – The President is in charge of the general management and coordination of the College of Specialties, ensuring the observance of the respective Regiment and the meeting of its logistical demands before the departments of the Bar Association.

6 – The chairs of each specialty are competent to constitute the Jury of the public oral examination according to article 10, and n.º1, of article 11 and to schedule the date of the examination.

7 – The specialist lawyer selected for a jury is obliged to participate.

8 – Lawyers whose personal relationship with the candidate is likely to influence the evaluation should not be nominated for the jury.

9 – If the number of specialist lawyers, the conditions and needs of functioning and organization of the College of Specialties and the efficient use of the means available justifies it, the General Council may dissolve the College of Specialties and establish as many Colleges as the number of specialties recognized and granted.

10 – The college of each one the specialties will have, in regard to the respective area of practice, the organic structure and the competencies laid down in this diploma for the College of Specialties.

Article 10 - The Public Examination

1 – The public oral examination is taken before a jury comprised of three specialist lawyers in the area of specialty in question.

2 – The public oral examination shall consist of:

- a) A debate about the professional curriculum presented by the candidate;
- b) A debate about questions, at the choice of the jury, pertaining to the specialty in question.

3 – The jury shall rule, by majority, finding the candidate approved or not approved.

4 – When preparing the public oral examination the jury may inquire the candidate, the bodies of the Bar Association or any other entities, for additional information regarding the professional curriculum of the candidate.

5 – On completion of the public oral examination, the file is sent to the General Council with the ruling of the jury.

Article 11 - Grant of the Title

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1 - The specialist lawyer title is granted by decision of the General Council preceded mandatorily of the candidate's approval in the public oral examination taken before the College of Specialties.

2 – The refusal of the specialist lawyer title prevents the candidate from reapplying in the following two years.

3 – If the refusal is grounded on the un-fulfilment of the minimum periods referred to in article 3, the application may be reassessed when those periods are completed.

Article 12 - Exemption from the public oral examination

The College of Specialties may, exceptionally, exempt the candidate from the oral public examination, when his professional curriculum, delivered in the terms of the article 7, shows manifest and well-known specific expertise in the area of any of the recognizable specialties, as long as he also meets the minimum requirements laid down in article 3.

SECTION III Appeals

Article 13 - Appeals

1 – The decisions of General Council that summarily rejects the candidacy, refuse the specialist lawyer title or decide to remove the title, are subject to appeal to the Superior Council.

2 – The Superior Council may request the candidate or any entity for information regarding the professional curriculum of the candidate or about the specific matter of the appeal.

3 - The ruling of the jury issued in result of the public oral examination is not subject to appeal.

SECTION IV Loss of the Specialist title

Article 14 - Loss of the title

1 - The specialist lawyer shall lose the title of specialist:

- a) With the suspension of membership in the Ordem dos Advogados for a period of more than five years;
- b) If he does not deliver periodically the curriculum, referred to in n.º 2 of article 4, to the College of Specialties;
- c) If the analysis of the curriculum delivered in accordance with n.º 2 of article 4, reveals that the specialist lawyer did not maintain a level of practice, nor acquired a training consistent with the title of specialty granted.

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2 – The removal of the specialist lawyer title is decided by the General Council, and in the cases stated in subsection c) of the previous number, the decision of the General Council shall be preceded by an opinion of the College of Specialties.

Section V **Transitory Provisions**

Article 15 - Installation of the College of Specialties

1 - The College of Specialties is deemed established after the General Council has appointed and sworn in its President.

2 – The first President shall draw up, with the collaboration of the Chairs of the specialties, the Rules of Procedure of the College of Specialties/Regiment, where the respective rules of functioning shall be laid down in accordance with the provisions of the present regulation.

Article 16 - Jury

1 – Until the installation of the College of Specialties, the public oral exam that article 10 refers to, shall be taken before a Jury comprised of three lawyers designated by the General Council.

2 – The members of the jury are selected amongst lawyers of recognized expertise and practice in the area of specialty in question.

3 – The Jury shall follow the procedure laid down in article 10 and shall exert transitorily all the other powers vested, by this regulation, in the College of Specialties.

Article 17 - Revocation

Regulation n.º 15/2004, 5th April of 2004, the Deliberation n.º 832/2004, 12 June of 2004, Regulation n.º 32/2004, 5th August of 2004 and the Internal Regulation n.º 1/2005, 20th October of 2005 are hereby repealed.

Article 18 - Temporal Scope

1 – The present regulation applies to applications received after its publication in the Official Journal of the Portuguese Republic (Diário da República).

2 - The confirmation of lawyer specialist's titles granted under Regulation n.º 15/2004, 9th January of 2004, shall follow the procedure laid down in n.º 2, of Article 4, and in subsections a), b) and c), of n.º 1 and in n.º 2, of article 14, of the present Regulation, namely under penalty of the consequences therein stated.

Lisbon, 17 October 2006.

The President of the General Council,

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Rogério Alves

ANNEX

Recognizable Specialities
(that n.º 2 of article 5 refers to)

Administrative Law;

Tax Law;

Labour Law;

Financial Law;

European and Competition Law;

Intellectual Property Law;

Constitutional Law.