



Représentant les avocats d'Europe
Representing Europe's lawyers

Mr. Maksim R. Haxhia
Albanian National Bar Association
Strt. Murat Toptani
Business Centar "Eurocol" 7 floor
Tirana
ALBANIA

Brussels, 24 September 2008

Dear Mr. Haxhia,

We are writing to you in relation to your request for assistance from the CCBE regarding the registration fees and disciplinary proceedings indicated in your 'Comments from the National Chamber of Advocacy of Albania on the issues of the Legal Profession (Bar)'.

We have consulted the chairmen of the CCBE PECO, Competition and Discipline Committees about your request and you will find below their views on the matters.

1) Registration fee

Albanian Bar request

The control on the lawyers licensing process and on the tariffs of licensing – proposing a ridiculous tariff/fee: 100 Albanian Leke which is approximately 0,6 Euro, quoting the para 3 of the article 4: "The tariff for taking the license for exercising the profession of the lawyer is 100 Leke"

The experts are of the opinion that it is very important that registration fees are not set so low as to deprive the bar of its ability to function, since this would jeopardise the independence of the profession and that, for that very reason, such fees ought to be set by the bar itself. On the other hand, if the bar set fees too high relative to the revenue of lawyers in a given country, it could be a barrier to entry into the profession.

You may wish to note that National Bars and Law Societies in Europe calculate registration fees on different bases.

We understand that the registration fee charged is equivalent to €1000. If that is so, then it could be considered high in comparison with other Bars. Presumably the members have voted to pay this sum to pay for services which they wish to receive, and which have been duly calculated and shown in the budget.

2) Disciplinary proceedings

Albanian Bar request

In the amendments proposed by the Ministry of Justice there are proposed clear intervention by the State/Minster of Justice regarding:

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- 1) *The procedure of disciplinary measures against the lawyers;*
- 2) *The procedure on the judgment/merits of a specific complaint against the lawyer*

Para 3 of the Article 15 of the Amendments:

“The Minister of Justice has the right to present before Tirana Court of Appeal the request for taking a disciplinary measure in the case that no action has been taken by the National Chamber of Advocacy within the time-period foreseen in the para 1 of this Article. The Minister of Justice has the right to appeal the decision taken by the Disciplinary Committee of the National Chamber of Advocacy in the case that the disciplinary measure given is not proportionate/lower than the infringement which has been taken place, including the cases where the Minister of Justice is not the subject that has presented the complain”.

The experts would like to refer the Albanian Bar Association to the CCBE recommendations on disciplinary process for the legal profession (September 2007) (enclosed), and the United Nations Basic Principles on the Role of Lawyers (August-September 1990), the Council of Europe Recommendation on the freedom of exercise of the profession of lawyer (October 2000) and the European Parliament resolution on the legal professions (March 2006). The relevant extracts of the documents from the United Nations, the Council of Europe and the European Parliament form part of the CCBE recommendations.

The experts would like to draw your attention to the following principles, which they believe are of relevance in relation to your request:

CCBE recommendation

- (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); (Comment: this is a quotation from the recommendation and therefore we think that we should keep it as it is.)*
- (b) *the primary responsibility of the conduct of disciplinary proceedings at first instance concerning lawyers preferably lies with the Bar or Law Society;*

United Nations principles

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.

Council of Europe recommendation

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.

European Parliament resolution

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

- *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,*

You may wish to note that the fact that the Ministry of Justice has a supervisory right in disciplinary decisions or even a right of appeal is not uncommon in the jurisdictions of the EU member States.

The experts suppose that in the appeal proceeding before the Tirana Court of Appeal lawyers as well as judges decide on the disciplinary case.

If the fair participation of lawyers is guaranteed by the law, the experts do not see any infringement of the autonomy of the legal profession.

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We presume that there is a full record of all complaints of misconduct made against members, and how each complaint was resolved, and that the Ministry of Justice can in no way with justification criticise the NCA for failing to carry out its duties in regulating the profession effectively.

We propose to discuss the issues brought forward by the Albanian Bar also at the next PECO Committee meeting, which will be taking place in Brussels on the occasion of the CCBE Plenary Session on 29 November 2008.

Please inform us of any new developments.

Sincerely,



Rupert Wolff
Chairman of the CCBE PECO Committee