



Représentant les avocats d'Europe
Representing Europe's lawyers

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LETTER TO MOLDOVAN BAR AND RECOMMENDATIONS (ANNEX)

Dear President,

We are writing to you in relation to your letter from 5 January 2006 asking for assistance from the CCBE on a number of issues with the aim to enhance the functioning of the Moldovan Bar Association and to assist the legal profession in Moldova in its reform process.

As you will know, the CCBE has been looking at this through its PECO Committee and Moldova Twinning Group, and activities were organised these last two years in response to the issues which you addressed in the letter.

We have particularly looked at the issue of the 'Administrative Bar structure' these last months since we believe that this is a very important issue which is also essential to take forward the other requests put forward in the letter (i.e. training of lawyers, disciplining of lawyers and the procedural rights of lawyers appearing before the European Court of Human Rights) and the reform process of the Moldovan Bar in general.

In October 2006, the Austrian Bar Association and the German Federal Bar (BRAK) organised a two-weeks training session for a Moldovan lawyer (Victor Tatarciuc) on the 'Administrative Bar structure'. The aim was to give a Moldovan lawyer the opportunity to learn about the structures of other Bars and Law Societies and to see whether any changes could/should be made in order to improve the existing structure of the Moldovan Bar. To continue its assistance on the administrative structure of the Bar Association, the CCBE supported in 2007 the co-ordinator project. Nadejda Macari was hired as a project coordinator to analyse the existing structure of the Moldovan Bar Association and make proposals in views of establishing a well functioning secretariat in line with the request of the Moldovan Bar Association.

You will find enclosed a list of recommendations (not exhaustive) which we hope will assist the Moldovan Bar in its reform process, in addition to our past activities. The recommendations are based on the information which we obtained these last years through the events organised in Moldova and the information which we received to date through the co-ordinator project.

We look forward to receiving your feedback on the proposed recommendations by 30 October 2008. We propose to discuss these in some detail on the occasion of the CCBE Plenary Session on 29 November 2008 in Brussels. You will receive an invitation to this Plenary Session in due course. We send a copy of this letter also to other European and international associations which are actively working for the legal profession in Moldova. This is to avoid any overlap in activities and to make these organisations aware of the CCBE activities.

Should you have any question or remarks please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Wolff', with a stylized flourish at the end.

Rupert Wolff
Chairman of the CCBE PECO Committee

CCBE Experts Recommendations for the Moldovan Bar

A. Introduction

These recommendations are addressed to the Moldovan Bar Association in response to its letter of 5 January 2006 in which the Moldovan Bar asked for assistance from the CCBE with regard to the issue of the 'Administrative structure of a Bar Association'. The Moldovan Bar addressed the following issues in the letter:

- i.) identifying the functions which the bar should perform;*
- ii.) how those functions should be performed;*
- iii.) drafting regulations for the performance of those functions;*
- iv.) guidance on the selection procedures for staff employed by the Bar;*
- v.) if possible, the placement for three to six months with the bar association of another small but advanced jurisdiction of the administrative head of the bar to gain practical skill in how an effective bar is operated."*

In October 2006, the CCBE organised a two weeks training for a Moldovan lawyer in order to learn about the structure of the German Federal Bar and the Austrian Bar and to put forth the learnt to the Moldovan Bar Association. The CCBE continued its assistance with the co-ordinator project (ongoing - starting date: 1 December 2007, duration: 1 year) which aims at examining the administrative structure of the Moldovan Bar in view of enhancing the everyday functioning of the Bar Association. Nadejda Macari was appointed as co-ordinator.

The recommendations, which follow below, take account of the current administrative structure of the Moldovan Bar (and budgetary situation) and contain proposals to the Moldovan Bar with a view to enhance its day-to-day work and functioning.

B. Recommendations

1. Functions of a Bar Association

The functions of a Bar Association may vary from country to country, however the CCBE experts have identified the following functions as commonly carried out by Bar and Law Societies in Europe:

- a) To protect and uphold the Rule of Law and the respect for human rights
- b) To represent the interests clients in society and to spread the knowledge to the public, that lawyers are the best advocates of their clients' interests
- c) To regulate the admission to practice and enrolment of lawyers
- d) To regulate the practice of lawyers, to monitor the compliance of lawyers with the rules of professional conduct (professional ethics) through an effective disciplinary mechanism
- e) To take measures necessary in order to improve the lawyers' profession
- f) To actively take part in the law making process in Moldova in commenting on draft legislation towards the law making institutions and if necessary the public
- g) To maintain good relations with the public (government, judicial bodies and society in general) – "external publicity"
- h) To constantly maintain good relations with its own members and trainee lawyers – "internal publicity"

The CCBE experts believe that it is essential to have a well functioning and structured secretariat in place to take forward the functions of the Bar Association. The recommendations therefore are limited to the improvement of the Bar's secretariat work.

Useful links to CCBE documents:

CCBE Charter of Core Principles of the Legal Profession, November 2006

http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Charter_of_core_prin1_1207642537.pdf

CCBE Code of Conduct , May 2006

http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2006_code_enpdf1_1182240432.pdf

2. Activities

The CCBE is aware of the budgetary situation of the Moldovan Bar and its limited resources. However, the CCBE experts believe that the Moldovan Bar could organise some activities within the existing budgetary framework. The activities proposed below should help the Moldovan lawyers in developing within their profession, to enhance transparency of the Bar's activities and to increase the public awareness of the legal profession:

- a) To organise seminars for lawyers on a regular basis: the CCBE experts believe that small seminars could be organised at the premises of the Moldovan Bar Association (for 20-30 people). Expert lawyers and representatives of the government and law institutions could give free of charge presentations on recent changes to Moldovan legislation and other topics of interest to the legal profession. Seminars could also be organised for Moldovan lawyers in the regions (outside Chisinau). It should be possible to organise such seminars at low cost and therefore within the current budgetary framework of the Bar. It is suggested that the Moldovan Bar prepares a detailed seminar budget for 2009 by 30 October 2008 (setting out the number of seminars to be organised in Chisinau and the regions and the proposed topics for such seminars).

The CCBE experts also believe that the Moldovan Bar should consider organising seminars for trainee lawyers in view of preparing them for the bar examination. The seminars should make future lawyers aware of their professional identity and of the role of the profession within the administration of justice and in society at large. The experts are aware of the request of the Moldovan Bar put forward in its letter of January 2006 but believe that the issue of the structure of the Bar need to be settled before they can respond to the request on training and admission to the profession.

- b) To establish working groups, composed of expert lawyers, which should assist the Bar in preparing responses/statements to/on any draft laws or other initiatives which affect the legal profession. If the government were to propose for instance changes to the law on the Bar or on divorce, the working group could prepare a response (which would then only need to be approved by the relevant body of the Moldovan Bar).
- c) To publish every month information about the Bar's activities on its website and in the Gazette. (Regarding the Gazette, see also recommendation point 4.)
- d) To organise, possibly in co-ordination with Moldovan Courts, an 'Open-Door Day' at least once a year where volunteering lawyers should provide free assistance. This could be organised in Chisinau and regions (on the same day).
- e) To organise on a regular basis (for instance 2 times a year) Legal Initiation Programs/conferences for law students at the University to inform them about the practical aspects of the lawyer's profession and practice in a given field (criminal law, family law, etc).
- f) To hold press conferences on an annual basis where the Bar should present all important activities to the public.

Useful links to CCBE documents:

CCBE Recommendation on Training Outcomes of Lawyers, November 2007

http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf

CCBE Model scheme on continuing training, November 20006

http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf

3. Secretariat of the Bar

The CCBE experts put forward the following proposals with regard to the Moldovan Bar secretariat (current composition: 2 secretaries and one accountant). The proposals are as follows:

a) To engage a Secretary General

We believe that the position of a Secretary General will greatly facilitate the everyday work of the Moldovan Bar Secretariat. He/she should assist the Bar (Congress, Presidency, Council, Commissions) in their work. The Secretary General should implement the decisions taken at the various institutional levels. He/she should be in charge of the administrative management of the Bar and a liaison and contact person for national and foreign authorities and organisations. The Secretary General's work should also be responsible for organising, for instance, the activities which are referred to above under 2), and any projects proposed by European and international organisations. He/she should maintain contact with European and international organisations. To carry out these tasks effectively, the Secretary General should have legal and managerial skills and knowledge of foreign languages (in particular English and if possible French since these languages are widely spoken amongst Bar and Law Societies in Europe).

b) To establish a 'Lawyers friendly room'

The CCBE experts recommend establishing a 'Lawyers friendly room' at the premises of the Moldovan Bar Association in Chisinau. Lawyers could come and consult the library (books, Gazette etc), receive information on the activities of the Bar Association and carry out research on the Internet. With regard to the latter, the Bar will need to provide a computer at the disposal of lawyers. This would also be a possibility for lawyers to socialise and to exchange information and experience. It is proposed that the Moldovan Bar prepares a detailed budget by 30 October 2008 to evaluate the costs of such a room. The Bar should also consider promoting such rooms at a regional level.

c) To provide regular training to secretaries

Members of secretariat will need to possess the necessary knowledge, skills and competences to carry out effectively secretarial tasks (i.e. they need to have training as a secretary, good IT skills, and knowledge of foreign languages when it comes to communicating with foreign Bars and Law Societies). We recommend that the Bar ensures that the secretariat possess the required skills and receive training if necessary.

d) Guidance on the selection procedures for staff employed by the Bar

The process of staff selection should be organised as an open procedure advertised on the Bar website, in the Bar's Gazette/Newsletter and the relevant media.

4. Finance

The CCBE experts are aware that the Moldovan Bar has limited financial resources at disposal.

The CCBE experts recall that budget information should be presented in a way that facilitates policy analysis and promotes accountability.

In order to improve the Bar's financial situation, the experts propose the following:

a) The Bar could consider raising the budget by allowing companies to advertise in the Bar's Gazette/Newsletter (see below) or on the website.

b) The CCBE experts propose that the Moldovan Bar changes the publication of the Gazette from monthly to quarterly in order to cut its costs. (We understand that the Bar is currently spending on the Gazette approximately 5,600€ out of a total budget of approximately 26,000€). In order to ensure timely and adequate information of lawyers, they propose to issue a monthly newsletter (1-2 pages) which could be mailed to Moldovan lawyers and also made available at the Bar's premises in Chisinau. The monthly newsletter should inform lawyers about any recent changes to the law and the activities of the Bar. The experts would also find it useful if the Bar were to carry out a survey as to what lawyers think about the Gazette.

c) The Bar may also wish to think about having a financial audit performed by an independent financial audit company. This would add to the transparency of the Bar's budget. Audit guarantees integrity of budget information.

d) The Bar could also consider whether it would be useful to review lawyers' fees so in order to see whether more adequate fee structures could be put in place. National Bars and Law Societies in Europe calculate lawyers' fees on different basis. Some national Bars and Law Societies take account of lawyers' income, age or family situation when setting the fees.

5. Follow-up of recommendations

The CCBE experts would appreciate to receive feedback from the Moldovan Bar to these recommendations by 30 October 2008. The CCBE experts are happy to discuss the implementation of the recommendations and assist where needed.