

Mr Enda Kenny TD  
An Taoiseach  
Department of the Taoiseach  
Upper Merrion Street  
Dublin 2  
Ireland

Mr Alan Shatter TD  
Minister for Justice Equality and Defence  
94 St Stephen's Green  
Dublin 2  
Ireland

Brussels, 11 January 2012

Dear Taoiseach,  
Dear Minister,

The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of around 1 million European lawyers through its member Bar and Law Societies from the 31 full member countries and the 11 further associate and observer countries. The CCBE is an international non-profit making association incorporated in Belgium. Since its foundation in 1960 the CCBE has been in the forefront of defending the legal principles upon which democracy and the rule of law are based. Amongst its diverse functions the CCBE acts as the liaison between the institutions of the European Union and Europe's national Bars and Law Societies and has been recognised as an intervener in a number of cases before the Court of Justice of the European Union.

The CCBE wishes to express its concerns about certain aspects of the Legal Services Regulation Bill 2011 recently published by the Irish Minister for Justice and Defence. These concerns relate to the encroachment on the independence of the legal professions in Ireland contained in the Bill.

The CCBE is informed in its view by the many instruments adopted at international level concerning the crucial role of lawyers and lawyers' professions in ensuring the proper administration of justice and accordingly the maintenance of the rule of law. In particular the CCBE refers to the 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, the Recommendation of the Committee of Ministers of the Council of Europe to Member States on the freedom of exercise of the profession of lawyer dated 25 October 2000, the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union the Universal Declaration of Human Rights, the European Convention on Human Rights and the European Union Charter of Fundamental Rights which came into force on 1 December 2009 as well as the European Parliament Resolution on the legal professions and the general interest in the functioning of legal systems, 23 March 2006. The CCBE has also had regard to the Principle of General Application in the International Bar Association's International Code of Ethics.

Many of these instruments as well as the relevant jurisprudence of the international courts emphasise that the adequate protection of human rights and fundamental freedoms to which all persons are entitled requires that all persons have effective access to legal services

provided by an independent legal profession and that professional associations of lawyers have a vital role to play in upholding professional standards of ethics.

UN principles 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.

The Council of Europe's Committee of Ministers' Recommendation (the "Recommendation") recognises that Bar Associations should draw up professional standards and codes of conduct. Such Associations have the task of strengthening professional standards and safeguarding the independence and interests of lawyers.

Insofar as disciplinary proceedings are concerned the Recommendation also recognises that Bar Associations should be responsible for, or be entitled to participate in, the conduct of disciplinary proceedings concerning lawyers. With regard to disciplinary proceedings the Explanatory Memorandum of the Committee of Ministers recalls the need for Bar Associations to establish and implement freely a code of professional conduct for lawyers. In the case of non-respect by lawyers of their professional standards, as established in codes of professional conduct "disciplinary proceedings can be adopted and applied by Bar Associations or other bodies which act independently of State bodies". Furthermore, Bar Associations should be entitled to be represented at disciplinary hearings if a separate and independent body is established.

The CCBE draws attention to its Charter of Core Principles of the European Legal Profession adopted by its Plenary Session in Brussels on 24 November 2006. The Charter contains a list of ten core principles common to the national and international rules regulating the legal professions. The principles include the independence of the lawyer, and the freedom of the lawyer to pursue the client's case as well as the right and duty of the lawyer to keep clients matters confidential and to respect professional secrecy.

The Legal Services Regulation Bill 2011 contains provisions involving an encroachment on the independence of the legal professions in Ireland which have not been adopted in any other European Union jurisdiction. Although a similar model for regulation was considered in the United Kingdom, it was rejected on the grounds that the continued existence of independent legal professions was incompatible with such a degree of governmental control. The proposed Legal Services Regulatory Authority to be established under the Bill will have unacceptable control over both professions under the Bill. It will control all aspects of professional practice, including training, entry and discipline. Of the eleven members to be appointed only four will be nominated by the legal professions. All will be appointed by the Government, by reference to a list of vague qualifications, including that appointees have expertise in "business and commercial matters" or in "competition law and policy" among others. The Government's appointees will have no security of tenure and can be removed at any time "for stated reasons including if in the opinion of the Government" the members removal appears to the Government "to be necessary for the effective performance of the functions of the Authority". The Bill empowers the Authority to draw up codes of practice for the profession, subject to the sanction of the Minister for Justice and Defence and to modification by him. It should also be noted that the proposed Authority (and, therefore, the Government) will also have absolute power over standards of professional practice, training and entry. The Bill provides an extraordinary power for the Authority to dictate standards of education in law schools and professional training institutions throughout Ireland.

With regard to professional misconduct no complaints, no matter how minor, will be decided by the professional bodies themselves. Instead a complex disciplinary structure is to be established with limited representation for the professions and the costs of which as of the authority itself shall be borne by the legal professions.

The CCBE, therefore, calls upon the Irish Minister for Justice and Defence to review the provisions of the Legal Services Regulation Bill in the light of the above remarks and to revise the provisions concerned in order to reflect the principles ensuring the independence of the legal professions enshrined in both European Union and international law and in the CCBE's Charter of Core Principles of the European Legal Profession and the Code of Conduct for European Lawyers. At present the CCBE considers the Bill to constitute a grave threat to the independence of the legal professions in Ireland and consequently a threat to the rule of law.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Prunbauer-Glaser', with a long, sweeping tail extending downwards and to the right.

Marcella Prunbauer-Glaser  
President