

Model Article on Independence

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1. An independent legal profession is a prerequisite for the rule of law.

1. Key role of independence provision.

The Charter of Core Principles of the European Legal Profession of 25 November 2006 provides as principle a) the independence of the lawyer, and the freedom of the lawyer to pursue the client's case¹:

"A lawyer needs to be free - politically, economically and intellectually - in pursuing his or her activities of advising and representing the client. This means that the lawyer must be independent of the state and other powerful interests, and must not allow his or her independence to be compromised by improper pressure from business associates. The lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts. Indeed without this independence from the client there can be no guarantee of the quality of the lawyer's work. The lawyer's membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers' independence. Self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer. It is notable that in unfree societies lawyers are prevented from pursuing their clients' cases, and may suffer imprisonment or death for attempting to do so."

It follows from those principles that society needs a fair system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction, influence, inducement, pressure, threats or interference, direct or indirect, of any kind or for any reason.

Independence is necessary:

- *to enable lawyers properly to defend clients against the State and*
- *to protect lawyers from being identified with clients,*
- *to build trust between lawyers and their clients,*
- *to preserve the rule of law.*

When representing clients, lawyers contribute to the observance of the rule of law by the public authorities.

¹ [CCBE Charter of Core Principles of the European Legal Profession](#) of 25 November 2016.

<p>2. <u>These principles are recognized by leading international authorities:</u></p> <p>a. art. 16 of the Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)².</p> <p>b. Principle One of Council of Europe Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer³, and</p> <p>c. Recital D and point 4 of European Parliament's Resolution on the legal profession and the general interest in the functioning of legal systems, dated 23 March 2006⁴.</p>
<p>2. In the exercise of his or her profession, the lawyer shall be independent, free from influence, including influence which may arise from his or her personal interests or as a result of external pressure. A lawyer must therefore avoid any impairment of his or her independence and should not compromise his or her professional standards in his or her dealings with the client, the court, third parties and public authorities. Otherwise, he or she shall not accept a mandate or, if already instructed, shall terminate his or her existing mandate.</p>
<p><i>What does it mean to be independent?</i></p> <p><i>Independence means that lawyers</i></p> <p><i>(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and</i></p> <p><i>(b) are able to travel and to consult with their clients freely both within their own country and abroad; and</i></p> <p><i>(c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics; and</i></p> <p><i>(d) shall be free from external pressure; and</i></p> <p><i>(e) shall resist any influence stemming from his/her own personal interests; and</i></p> <p><i>(f) shall not compromise their professional standards to please the client, the court, third parties or public authorities.</i></p>

² [United Nations 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.

³ [Council of Europe Recommendation Rec\(2000\)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer](#), adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies.

⁴ [European Parliament resolution on the legal professions and the general interest in the functioning of legal systems](#), 23 March 2006.