

« *Lawyers for Lawyers* »

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TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 30: THE ROLE OF LAWYERS AND BAR ASSOCIATIONS AND THEIR PROTECTION

Several international texts refer to the role of lawyers and bar associations, as well as their protection.

With the adoption of the *Basic Principles on the Role of Lawyers* at the Eighth Congress of the United Nations on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, lawyers are viewed as an « *essential agent for the administration of justice* ».

These principles are intended to guide Member States so that lawyers are able to carry out their work in an independent manner.

Fundamental principles relating to the independence of the legal authorities were adopted 5 years previously by the Seventh Congress of the United Nations for the Prevention of Crime and the Treatment of Offenders and were confirmed by two resolutions of the General Assembly. They were complemented in 1990 in Havana by the Guidelines Applicable to the Role of Prosecutors.

On a European level, reference can be made to *Recommendation 2000/21 of the Council of Europe on freedom of exercise of the profession of Lawyer* (adopted by the Committee of Ministers on 25 October 2000).

➤ ***The right to a lawyer***

The access to justice is a fundamental right. The right to have assistance to a lawyer is essential to guarantee this right (see Files 18 and 19 on Fair trial).

- **In criminal matters**

The *basic principles on the role of Lawyers* set out in great detail all guarantees in criminal matters and in particular sets out that any persons arrested or detained, whether or not they are the subject of a criminal charge, can communicate promptly with a lawyer and in all circumstances within 48 hours of their arrest or detention.



Lawyers for Lawyers

- **The right to a lawyer for all**

The *basic principles on the role of Lawyers* indicate that public authorities must make provision for sufficient funds and resources to offer legal services to persons without sufficient resources. Professional lawyer associations should collaborate in the provision of these services and participate in the promotion of programmes to inform litigants of their rights and duties before the law, and the important role played by lawyers with regard to the protection of fundamental freedoms.

Moreover, the right of the accused to benefit from the free assistance of a lawyer, if he or she does not have sufficient means to pay for a defender, is enshrined in the International Covenant on Civil and Political Rights (art. 14.3.d), the European Convention on Human Rights, European Court of Human Rights (art.6.3.c), or the American Convention on Human Rights (art.8.2.e).

In order to follow this principle, States strive for putting in place legal aid for persons who prove to have insufficient means to assert their rights in justice and pay a defender. This aid may cover the advice, defence and representation and may apply to different stages of the procedure. The terms vary from State to State.

Special training may also be organised for lawyers who practice in the framework of legal aid.

➤ **Rights and guarantees relating to the exercise of the profession of lawyer**

The *basic principles on the role of Lawyers* pay particular attention to the guarantees relating to the exercise of the profession of lawyer and the fundamental role of public authorities in this area.

Public authorities should ensure :

- That lawyers « *are not the subject of threats, actions or economic or other sanctions for all measures taken in accordance with their obligations and recognised professional standards and their code of ethics* ».
- To provide protection of lawyers if they are in danger.
- Observance of civil and criminal immunity for any pertinent declaration made in good faith in written or oral submissions or when appearing before a court of other legal or administrative authority.
- That lawyers have access to relevant information, files and documents or under their control, within deadlines which are compatible with the provision of effective legal assistance to their clients.
- Strict observation of confidentiality between lawyers and their clients at all stages of their professional relationship.
- That the profession of lawyers is not solely reserved to an elite.

Moreover, lawyers should not be identified with their clients or their clients' causes as a result of discharging their functions.

In addition to these guarantees particular to the profession, lawyers, like other citizens, should have freedom of expression, belief, association and assembly.

The right to form independent professional associations and the right to belong to them is also recognised for lawyers in the *basic principles on the role of Lawyers* as well as in the Recommendation of the Council of Europe.

➤ **The duties and responsibilities of lawyers**

Lawyers, as « *essential agents in the administration of justice* », also have duties and responsibilities. The European Recommendation is more specific than the UN text on this point and its Principle III entitled « Role and Duties of Lawyers » is similar to a « hard core » of ethical principles of the profession.

- Observance of professional confidentiality in accordance with national legislation, regulations and the code of ethics of their profession.
- Provision of advice to their clients with regard to their legal rights and obligations, the likely result and consequences of the case (including costs).
- Taking necessary legal measures to protect, respect and implement the rights and interests of their clients.
- Respect for legal authority and exercise of their duties before the courts in compliance with legislation and other national regulations and the code of ethics of their authority.

Lawyers should also make sure that the essential rules of a fair trial are observed, and should observe themselves those which apply to them, especially the principle of adversarial proceedings. Lawyers are one of the key actors of a fair trial.

The *basic principles on the role of Lawyers* define the disciplinary procedures in detail and in particular require that they be brought before an impartial disciplinary court constituted by the Law Association or before an independent statutory authority or tribunal. Lawyers should be able to be assisted by a lawyer of their choosing and decisions must be appealable.

➤ **The role of national Bar Associations**

The creation of a national Bar association representing all the lawyers makes it possible to standardize the professional rules, and also the training of lawyers, to increase the quality of the services and to protect better the lawyers.

Moreover, the national Bar associations play a role of general interest as far as they contribute to improve the access to Justice and guarantee the citizens' right to defend themselves, by producing in lawyers an additional disciplinary responsibility and by imposing a code of ethics subjected to rules of control.

Sources :

Basic principles on the role of Lawyers.

Recommendation 2000/21 of the Council of Europe on the freedom of exercise of the profession of lawyer.

Recommandations du Conseil des barreaux européens (CCBE) sur l'aide juridique :
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/FR_Legal_Aid_recomme2_1291033916.pdf.

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