Questionnaire for civil society and bar associations

1. Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the [Basic Principles on the Role of Lawyers](https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx), please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner

The Constitution of the Republic of Slovenia in Article 137 provides that attorneyship is an independent service within the system of justice and is regulated by law. Attorneys Act stipulates that attorneyship shall be an autonomous and independent service within the justice system. Attorneys shall practise the legal profession as a liberal profession. The right to practise as an attorney shall be acquired by entry in the register of attorneys. Law firms shall also be entered in the register referred to in the preceding sentence. Article 3 of the Attorneys Act notes that attorneys shall be independent and autonomous in the performance of their duties. As stated in Article 5 attorneys shall freely decide whether to undertake the representation of a client who has approached them. Attorneys shall refuse to undertake such representation if they have represented the opposing party in the same case, if the opposing party has been represented by an attorney working in the same law office, if they have worked as an employed attorney, candidate attorney or trainee attorney with an attorney representing the opposing party, or if they have acted in the same case as judge, state prosecutor, authorised official of law enforcement authorities or as an official in administrative proceedings, and in other cases provided by an Act. Attorneys shall respect the confidentiality of all information entrusted to them by their clients. This obligation shall also be binding upon other persons working in the law office as provided for in Article 6 of the Attorneys Act.

Article 7 of the Attorneys Act provides an attorney may not be detained in criminal proceedings initiated against them for suspicion of a criminal offence committed while performing the profession of attorney without the prior permission of a panel of three judges of a second instance court competent for the territory of the first instance court before which the proceedings are pending. The court shall notify the Bar Association of Slovenia of such detention order. Moreover, Article 8 stipulates that a law office may only be searched based on a search warrant issued by the competent court. Only documents and items explicitly referred to in the search warrant may be subject to the search. The confidentiality of other documents and items may not be compromised in the search. A representative of the Bar Association of Slovenia shall be present during the search of a law office.

As provided in Article 11 of the Attorneys Act attorneys shall be entitled to employ any legal remedy which they consider useful to the client they represent within the limits of the law and their authorisation. In representing clients, attorneys shall act conscientiously, fairly and with due diligence, and in accordance with the principles of professional conduct for attorneys. Further, Article 15 of the Attorneys Act stipulates notwithstanding the provisions of any other Acts regulating the transmission of personal data to personal data controllers and users, state authorities, authorities of self-governing local communities and holders of public authority shall provide attorneys the data they need for the performance of their duties in a specific case free of charge within 15 days of receiving a written request, without the consent of the data subject.

Article 59 and 60 of the Attorneys Act provide attorneys shall practise their legal profession conscientiously and shall be held responsible for any breach of duty in that regard. The statutes of the Bar Association shall define the acts that constitute a breach of duty in the practice of the legal profession, as well as the acts that constitute a breach of conscientious work and practical training in a law office. The duty of the Bar Association, its disciplinary bodies and the bodies responsible in assessing breaches of the Code of Professional Conduct for Attorneys is to ensure the effective, impartial and transparent exercise of its members' responsibility in the event of disciplinary and ethical breaches.

For instance, Contentious Civil Procedure Act in Article 11 stipulates that in the event that the parties, interveners, their representatives or attorneys, with intention of harming another person or achieving goals contrary to the custom and usage or good faith and fairness, abuse the rights stipulated by the present Act, the court may impose on them a fine. In that case the Bar Association is notified (Article 109). Additionally, if the attorney is called as a witness in civil proceedings, he/she may refuse testimony on facts of which he has learnt as an attorney (Article 231 of the Contentious Civil Procedure Act).

1. What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.

As noted above the court can fine an attorney if in the submission or in speech he or she insults the court or any participant in the proceedings or abuses his/her rights. The Bar Association needs to be notified. However, the fine is limited in the amount and the attorney cannot go to jail for not paying it, according to the decision of the Slovene Constitutional Court in 2005.

Only the Disciplinary Tribunal sitting as a panel of two judges of the Supreme Court of the Republic of Slovenia and three attorneys can decide on disciplinary matters involving a breach of attorney's duty punishable by a suspension of the right to practice the legal profession. The president of the panel shall be a judge.

The judges acting as the president and member of the disciplinary tribunal panel shall be appointed in advance with the annual work schedule of the Supreme Court. The attorneys who are members of the panel shall be elected by the Assembly of the Bar Association for a period of two years. The president and the members of the disciplinary tribunal panel shall have deputies who shall perform their offices whenever they are unable to perform them for the reason of exclusion or any other justified reason. The deputies shall be appointed or elected in the same manner as the president and the members of the panel. The members of the panel appointed from the ranks of attorneys and their deputies may not hold any other office in Bar Association bodies or be employed in the professional service of the Bar Association.

Otherwise, the Bar Association of Slovenia is a self-regulatory disciplinary body. Disciplinary bodies, which are organized in the scope of the Bar but independent from it, are Disciplinary Committees of First and Second Instance, Disciplinary Prosecutor and Disciplinary Tribunal.

The disciplinary functions of the Bar Association are exercised by the Disciplinary Committee of First Instance. The Disciplinary Committee of First Instance is composed of a president and 15 members elected for 3 years by the General Assembly of the Bar Association from the ranks of attorneys, sitting as a bench of three (2 attorneys and 1 member is appointed by the Ministry of Justice from among lawyers who have a bachelor’s degree in law with at least three years of practical experience in the legal profession after having passed the bar exam.). It hears all matters of discipline against attorneys except those reserved to the Disciplinary Tribunal. The Disciplinary Committee of Second Instance is composed of a president and 15 members, elected by the General Assembly of the Bar Association from the ranks of attorneys for 3 years, sitting as a bench of three (2 advocates, 1 member appointed by the Ministry of Justice). It hears appeals against decisions of the Disciplinary Committee of First Instance.

The prosecution of a disciplinary offence is time barred on expiry of two years from the date of the offence. If the disciplinary offence is at the same time a criminal act the prosecution shall become statute-barred within the same time limit as provided by the statute of limitations for criminal prosecution. The statute of limitations for the prosecution of a disciplinary offence is interrupted by the report of the disciplinary violation to the Disciplinary Prosecutor and any task in the proceedings before the disciplinary committee or the disciplinary tribunal. The execution of a disciplinary measure shall become statute-barred within two years from the day the decision by which the measure was imposed becomes final.

Types of disciplinary sanctions are a warning, reprimand, fine within the range of 500,00 EUR – 5000,00 EUR and suspension of the right to practice the legal profession: it is imposed for a period of five years, and it is absolute, i.e., it is not limited to certain fields of law. A prohibition to practice applies on the entire state territory. The disciplinary measure of suspension of the right to practice the legal profession may be determined and imposed only in the event of severe breaches of duty in practicing the legal profession, which means that the attorney is deemed unworthy of the trust required to practice the legal profession. After the period (of max. 5 years) has passed, the person may re-apply for entry in the register of attorneys. When deciding on reinstating an attorney, it is assessed by the Bar Association whether the person is deemed worthy of the trust required to practice the legal profession.

1. Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country, and describe them.

The independence of the legal profession is also connected with financial independence of attorneys. In Slovenia the act called Attorneys’ Tariff determines the method of payment of legal services and expenses that clients are obliged to pay for the performed legal services. An attorney and his client may reach an agreement that is different from the tariff, but the Attorneys’ Tariff is binding when the court or other state authority decides on the obligation to reimburse the party who has succeeded in a dispute.

In this regard it should be noted that the attorneys providing free legal aid are entitled to remuneration and reimbursement of only 50% of the costs calculated according to the Attorneys’ Tariff. This means there is a financial (unjustified) difference between working for a client, which is not entitled to free legal aid (because of his economic status) or for a client who is entitled to it, even though the amount of work and the proceedings could be exactly the same. In all legal aid cases the amount paid is at 50% of its stated value.

This rule does not enable attorneys’ independence, since a 50% pay cut is imposed and providing legal assistance could even be reflected as a loss when considering the overhead costs associated with such cases. The Slovenian Bar Association has repeatedly proposed that attorneys should be paid in full (and not 50%) according to the Attorneys’ Tariff for free legal aid. Moreover, it should be noted that the Slovenian Ministry of Justice issues every competent court a yearly amount from the State budget for legal aid. Subsequently, the court system and the body which appointed the attorney to the case is responsible for paying the legal aid fees. However, the Attorneys are the ones that bear the brunt of the associated costs and ultimately having their income lowered and determined by the State.

1. Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?

The Bar Association of Slovenia is *de jure* and *de facto* independent from the State. Article 43 of the Attorneys Act provides the Bar Association shall have the status of a legal person. Article 44 then stipulates the statutes of the Bar Association shall define in detail the tasks and organisation of the Bar Association, the tasks of the Assembly (which is the highest body) and other Bar Association bodies, the method of providing funds for the operation of the Bar Association, as well as other issues relevant for the operation of the Bar Association. The statutes of the Bar Association shall be approved by the Government of the Republic of Slovenia.

Membership of the Bar Association of Slovenia shall be mandatory for attorneys practicing the legal profession in the Republic of Slovenia as provided in Article 41 of the Attorneys Act. Article 42 stipulates the Bar Association shall monitor and address issues arising in relation to attorneys' practice, strive to provide for the coordinated development of attorneyship, adopt the code of professional conduct for attorneys and perform other legally prescribed tasks.

The duty of the Bar Association, its disciplinary bodies and the bodies responsible in assessing breaches of the Code of Professional Conduct for Attorneys is to ensure the effective, impartial and transparent exercise of its members' responsibility in the event of disciplinary and ethical breaches (Article 60 of the Attorneys Act).

1. Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?

For alleged violations of standards of professional conduct 97 lawyers have been subject to disciplinary proceedings in the last five years (from January 1, 2017 until now). 48 of them were found responsible for violations in the practice of the legal profession. No one has been excluded for disciplinary offenses in the last 5 years; the maximum disciplinary ruling was a maximum fine of 5,000 EUR.

1. Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.

In 2020, the Slovenian Bar was informed about one case of a lawyer being threatened with death by an unknown person. The lawyer reported this matter to the police. In this regard, the Slovenian Bar also had a meeting with the Ministry of Justice. So far the state authorities have not taken any action.

1. What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.

We organise Slovene Lawyers Day, PRO BONO Legal Aid Day (since 2011). Within the cooperation with CCBE we organise European Lawyers Day. There are also meetings, conferences and other events (participation in signing the Resolutions,etc.) regarding the independence of our profession.

1. To what extent has, the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.

It has not, the only problem in Slovenia in that regard was that the courts were closed for a very long time because of the pandemic. The orders on special measures due to the COVID-19 epidemic among other matters limited court operations to specific cases, suspended procedural deadlines, implementation of procedural actions and the serving of judicial documents in non-urgent matters. The orders also impeded the physical access of clients and attorneys to courts. As a result, the efficiency of the court system decreased and there are court backlogs due to the prolonged closure of the courts.

It should also be noted that there are many procedures and procedural actions that could be carried out via video conferencing or through the digitalization of processes. The Slovenian procedural acts already regulate the possibility of for instance holding a hearing via video conference, but unfortunately it is not put into practice in sufficient number of cases. This would increase the efficiency and speed of proceedings, while not restricting access to courts even in extreme situations.

1. Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.

Slovenian Bar Association notices that Ministries adopting the legislation procedures treat it very differently. In some very exceptional cases representatives of Slovenian Bar Association already participate in the working team concerned with drafting of the bill at the Ministry, while in other cases Slovenian Bar Association may enter the legislative procedure as late as in the phase when the drafting of a regulation is already completed and comments thereto may only be made within a time-limited public consultation. Should Slovenian Bar Association be admitted to drafting of the legislation at a very early phase, the bar as part of the judiciary could contribute much more to the search for adequate solutions concerning the Slovenian legal order.

Equal pay under the Attorneys’ Tariff for an attorney providing free legal aid and for an attorney working for a client, who is not entitled to free legal aid.

We would also propose some other measures, like direct online access to cases at the court, free access of lawyers to registry during the working week not only during the opening hours of the registry.