**Hungarian contribution to the report of the Special Rapporteur on the independence of judges and lawyers on the protection of lawyers in the free and independent exercise of the legal profession**

**Question 1**

In the Hungarian legislation, Articles XXIV and XXVIII of the Fundamental Law guarantee the right to a fair trial and the right to legal remedy, including the procedural principle of equality of arms, the effective exercise of which is inconceivable without a functioning legal profession. In view of the importance of the involvement of the legal profession, the Constitutional Court has confirmed in several decisions on the independence of lawyers and the constitutional status of the legal profession that *“[t]he distinctive feature of the legal profession is that, as a liberal profession, it is a private activity which, for reasons of guarantee, is expressly distinguished from public authority as a private activity in the sphere of the operation of public authorities.”* [22/1994. (IV. 16.) Constitutional Court Decision, ABH 1994, 127, 131.]. Furthermore, in relation to Decision 1/2015 (I. 16.) of Constitutional Court, the parallel reasoning of Tamás Sulyok, Judge of the Constitutional Court, states that *“[i]t can be concluded that the legal profession is an institution indispensable for the fundamental value of the proper functioning of the judiciary under the rule of law and for the effective exercise of fundamental rights, without which neither the proper functioning of the judiciary nor the protection of fundamental rights can be ensured.* ***Independence is a fundamental characteristic of the legal profession. The institution of the legal profession, in the constitutional point of view, the main guarantee of which is that both the legal profession as an institution and the individual lawyer's livelihood are measured and financed by the market. The proper exercise of the legal profession depends on the State ensuring that the public confidence necessary for the functioning of the institution of the legal profession and, through it, for the practice of the profession, is maintained.”***

In order to enforce the above mentioned fundamental constitutional rights, the general principles of Act LXXVIII of 2017 on Legal Practice (hereinafter: Legal Practice Act) also stipulate that the legal profession is exercised with legal expertise, by lawful means and in a manner independent of public authorities. In addition, there is also a concept of independence in the area of operation, which is intended to ensure independence from influences, which would limit or exclude the lawyer’s freedom of discretion. Article 6 of the Legal Practice Act states that a lawyer shall be unrestricted and independent and may not undertake any obligation that endangers their professional independence. The internal limitation on that independence is the obligation to act in accordance with the best professional practice and the external limitation is the obligation to comply with the rules of procedure laid down by law. The independence of a lawyer can be understood partly as personal and partly as organisational independence.

It should be emphasised that the role of the State in regulating the activities of lawyers within the framework of the rule of law is to guarantee the free market in lawyers’ activities. The state shall also refrain from unnecessary interference in the market for lawyers’ services in order to enforce the independence of lawyers.

In accordance with the above, the Hungarian Legal Practice Act guarantees the possibility of free choice of lawyer and client, free agreement on the fee, and the obligation of confidentiality of lawyers and its respect [Section 9-12 of the Legal Practice Act]. The aim of the conflict of interest rules is to achieve the independence of lawyers from their own interests outside the case [Section 20 of the Legal Practice Act].

**Question 2**

In Hungary, the main guarantee of the independence of lawyers and public confidence in the legal profession are the bar associations. This was confirmed by the Constitutional Court in its Decision 22/1994 (IV. 16.) : ***“The Bar, as a public body, institutionally guarantees to the public seeking legal protection the professional competence of its members, the lege artis provision of legal protection and legal representation, and institutionally guarantees independence in the performance of the tasks carried out in the private sector. The independence of lawyers is guaranteed and stressed by the Bar as a public body.”***

In Hungary, the independence of lawyers from the state is based on the fact that public authority over their activities is exercised not by state bodies, but by the bar associations as autonomous bodies. The Bar, as a public body, ensures the protection of lawyers’ rights, promotes the fulfilment of their obligations, and carries out the official control and disciplinary proceedings. The special procedural nature of the disciplinary procedure provides an effective means of sanctioning unlawful or incompatible conduct, but the bar procedure also guarantees immunity from state interference. In addition to these competencies, the Bar acts as an administrative authority, maintains the registers of lawyers and law firms, and performs public authority supervision and control functions. Bar associations, as autonomous bodies constituted by the members of the profession, are able to effectively guarantee the independence of the legal profession and of the persons who carry out their activities, through the officers and governing bodies elected from among their members. It is also important to mention that the state can only exercise control over the bars on the basis of legality. The subsidiary nature of the supervision of legality means that the framework within which the Minister for Justice may exercise that power is determined, on the one hand by the autonomy of the Bar and, on the other hand by the interest in the proper functioning of the Bar. This is how the supervision provides the protection of justice and the public interest and, ultimately, the guarantee of legal certainty.

**Question 3**

As already indicated in point 2, the bar associations, as public bodies of legal professionals and attorneys-at-law, operate on the principle of self-governance, perform professional duties and offer the representation of their interests, has a major role in protecting the independence of lawyers. The bar association performs public duties related to professional guidance and representation of interests for those entitled to perform the professional activities of an attorney-at-law and to the security of the legal transactions that are linked to the performance of the professional activities of attorneys-at-law and specified in its statutes [Section 144 of the Legal Practice]. The Hungarian Bar Association (MÜK) ensures the protection of the rights of those persons entitled to perform the professional activities of an attorney-at-law and promote the fulfilment of their obligations, and also lay down the professional standards pertaining to the activities of an attorney-at-law. The Bar expresses its opinion on matters related to the activities of an attorney-at-law, keep the bar association register and ensure the related technical and IT conditions. In addition to all these tasks, the Bar organises professional training for lawyers, organises the accreditation of training sites and compiles the agenda for professional education and further training courses. Among the above-mentioned tasks of the Bar, we would like to highlight that, as an autonomous body, it has the right to lay down detailed rules and regulations, in this context we would like to mention the Regulation 6/2018. (III. 26.) MÜK on the Ethical Standards and Expectations for Legal Practitioners. **The Code of Ethics also emphasises that a lawyer must take particular care to avoid any appearance of a conflict of interest in the course of his or her work, and must not engage in any activity that does not violate a conflict of interest rule but which would undermine the dignity or independence of the legal profession. Under the current domestic legal framework, all these provisions together guarantee an appropriate level of professionalism and independence.**

**Question 6**

In our country, the emergency situation created by Covid-19 has not affected the fundamental principles governing the operation of the legal profession, nor the independence of lawyers. During the state of danger, measures were adopted primarily to ensure the uninterrupted functioning of lawyers. To ensure the continuity of the oaths of office during the state of danger, the oath-takers were able to start their activities by signing the document of the oath electronically. Provisions were adopted to ensure that certain procedural acts are carried out electronically in the absence of the parties and to ensure that the functioning and decision-making of the bar associations are carried out by electronic means.

**Question 7**

With regard to the last question, we would like to note that the new Law on Legal Practice entered into force on 1 January 2018, which guarantees the free and independent exercise of the legal profession, and in our opinion the current Hungarian legislation ensures the effective and independent functioning of lawyers.